Supreme Court, U. S.
FILED
MAR 10 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellant
Two World Trade Center
New York, New York 10047
Tel. No. (212) 488-3443

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

AMY JUVILER
Assistant Attorney General
of Counsel

TABLE OF CONTENTS

	PAGE
Opinions Below	2
Jurisdiction	2
Statute and Regulations Involved	3
Questions Presented	4
Statement of the Case	5
A. State Statute and Regulation	5
B. The Plaintiffs	9
1. *Ronald Milne*	9
2. *Robert C. Lee*	10
3. *Douglas Streeter*	11
4. *The Brothers Beverly*	11
C. Prior Proceedings	12
Argument	14
A. This appeal raises a substantial issue as to the reasonableness of a rebuttable statutory presumption which arises in an application proceeding and which deals with facts which are wholly within the knowledge and control of the applicant	15
1. The presumption does not deny the applicant due process of law because it can be rebutted	15
2. The presumption applied in this administrative proceeding does not shift the burden of proof or of going forward	17

PAGE

3. In the absence of evidence to the contrary, it is rational to find that a person quit his job with the intent of obtaining public assistance, if he applies for that assistance shortly after he terminated his employment 19

4. The enactment of this presumption was a proper exercise of Legislative power 22

5. It is reasonable to require an applicant for assistance to provide relevant evidence which is entirely within his possession ... 23

B. This appeal raises a substantial question whether a trial type formal hearing is required prior to the use of a rebuttable presumption to determine eligibility for State benefits 24

C. This appeal presents a substantial issue as to the scope of judicial power to enjoin statutory provisions relating to a class of persons when no plaintiff was a member of that class 27

Conclusion 31

TABLE OF CASES

Arnett v. *Kennedy*, 416 U.S. 202 (1974) 26

Bandini Petroleum Co. v. *Superior Court*, 284 U.S. 8 (1931) 18

Campbell v. *United States*, 365 U.S. 85 (1961) 24

Carrington v. *Rash*, 380 U.S. 89 (1965) 17

Dandridge v. *Williams*, 397 U.S. 471 (1970) 22, 23, 24

De Funis v. *Odegaard*, 416 U.S. 312 (1974) 29

PAGE

De Kalb Real Estate Board v. *Chairman and Board of Commissioners*, 372 F. Supp. 748 (N.D. Ga. 1973) 17

Electric Bond and Share Co. v. *Securities and Exchange Commission*, 303 U.S. 419 (1938) 29

Ferguson v. *Skrupa*, 372 U.S. 726 (1963) 23

G.E.J. Corp. v. *Uranium Aire, Inc.*, 311 F. 2d 749 (9th Cir. 1962) 24

Golden v. *Zwickler*, 394 U.S. 103 (1969) 29, 30

Hagans v. *Lavine*, —— U.S. ——, 94 C. Ct. 1372 (1974) 23

Hayburn's Case, 2 Dall. 409 (1792) 28

Leary v. *United States*, 395 U.S. 6 (1969) 17, 18, 19

Liverpool, N.Y. & P.S.S. Co. v. *Commissioners*, 113 U.S. 33 (1885) 30

Mobile J. & K.C.R. Co. v. *Turnipseed*, 219 U.S. 35 (1910) 18, 19, 20

Muskrat v. *United States*, 219 U.S. 346 (1911) 30-31

Nelson v. *Sugarman*, 361 F. Supp. 1132 (S.D.N.Y. 1971) 25

New York State Department of Social Services v. *Dublino*, 413 U.S. 405 (1973) 28

Owens v. *Roberts*, 377 F. Supp. 45 (M.D. Fla. 1974)..18, 19

Poe v. *Ullman*, 367 U.S. 497 (1961) 29, 30

Snell v. *Wyman*, 281 F. Supp. 853 (S.D.N.Y. 1968) aff'd 393 U.S. 323 (1969) 19, 23

San Antonio School District v. *Rodriguez*, 411 U.S. 1 (1973) 22, 23

SCM Corporation v. *Radio Corporation of America*, 407 F.2d 166 (2d Cir. 1969), *cert. denied* 395 U.S. 943 (1969) 29

PAGE

Stanley v. *Illinois*, 405 U.S. 645 (1972) 16

Starns v. *Malkerson*, 326 F.Supp. 234 (D. Minn. 1970) aff'd 401 U.S. 985 (1971) 19

Tileston v. *Ullman*, 318 U.S. 44 (1943) 29

Torres v. *New York State Department of Labor*, 333 F. Supp. 341 (S.D.N.Y. 1971), aff'd 405 U.S. 949 (1972) 26

Torres v. *New York State Department of Labor*, 321 F. Supp. 432 (S.D.N.Y. 1971), vacated and remanded 402 U.S. 968 (1971) 26

Tot v. *United States*, 319 U.S. 463 (1943) 17, 19, 24

United States v. *N.Y.N.H. & H.R.R. Co.*, 355 U.S. 253 (1957) 24

United States v. *Romano*, 382 U.S. 136 (1965) 17, 18

United States Dep't of Agriculture v. *Murry*, 413 U.S. 508 (1973) 16

Vlandis v. *Kline*, 412 U.S. 441 (1973) 16, 17

Statutes and Rules Cited

28 U.S.C.

§ 1253 2

§ 2281 11

§ 2284 11

42 U.S.C.

§ 602(a)(19) 8, 28

§ 607(b)(1) 8, 20

§ 633(g) 8

PAGE

McKinney's Session Laws of New York, 194th Sess. Laws of the Regular Session, 1971, Vol. 2, pp. 2636-7 6-7

Laws, 1971, Ch. 946 6

N.Y. Labor Law

§ 501 7

§ 593 7

NYSSL

§ 131(11) .....*in passim*

§ 158(a) 9

29 CFR

§ 57.13 8

45 CFR

§ 233.11 ..... 8, 28

18 NYCRR

§ 351.6 ..... 6, 18

§ 351.8 ..... 6, 18

§ 385.6(b) ..... *in passim*

§ 385.7 .....2, 4, 8, 13, 15

Other Authorities Cited

"Wigmore on Evidence," Third Edition, Vol. IX ..16, 23-24

INDEX TO APPENDIX

	PAGE
APPENDIX A—Opinion of the Three-Judge District Court Granting Declaratory and Injunctive Relief	1a
APPENDIX B—Final Judgment and Order of the Three-Judge District Court	17a
APPENDIX C—Memorandum Opinion and Order of the Three-Judge District Court Granting a Partial Stay of its Order Pending Appeal	20a
APPENDIX D—Notice of Appeal	21a

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT

The Commissioner of the New York State Department of Social Services ("appellant") appeals from a final judgment and order of a three-judge district court for the Southern District of New York (OAKES, C.J., BONSAL, WYATT, D.JJ.) entered on December 13, 1974.

The final judgment and order declared invalid ". . . the presumption contained in the second sentence of New York

Social Services Law, § 131(11) (McKinney Supp. 1974) and 18 N.Y.C.R.R. § 385.7 that persons who voluntarily terminated their employment within 75 days preceding their application for Home Relief or Aid To Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance . . ." (17a). The court found that the rebuttable presumption applicable to recipients of state financed Home Relief (HR) was irrational and, although no plaintiffs were applicants for Aid to Families with Dependent Children (AFDC), invalidated a parallel rebuttable presumption relating to persons who applied for AFDC within 30 days of voluntarily terminating their employment.

On January 22, 1975, the Court stayed so much of its final judgment and order as enjoins the defendant from enforcing the presumption in cases involving applicants for AFDC (18a).

Opinions Below

The opinion of the three-judge district court in *Milne et al.* v. *Berman, et al.*, dated November 11, 1974, granting declaratory and injunctive relief, is not reported but it is reproduced as Appendix A to this Jurisdictional Statement.

The memorandum opinion and order of the three-judge district court dated January 22, 1975, granting a partial stay pending this appeal is not reported, but it is reproduced as Appendix C to this Jurisdictional Statement.

Jurisdiction

The jurisdiction of this Court to consider this appeal is conferred by 28 U.S.C. § 1253.

The final judgment and order appealed from was entered in the District Court on December 13, 1974. The notice of

appeal to this Court was filed in the district court on January 10, 1975. The final judgment and order is reproduced as Appendix B and the notice of appeal is reproduced as Appendix D to this Jurisdictional Statement.

Statute and Regulations Involved

New York Social Services Law § 131(11) provides:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

18 New York Code of Rules and Regulations § 385.6(b) provides:

> "(b) Any person who applies for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such or larger amount thereof in the absence of evidence to the contrary supplied by such person."

18 New York Code of Rules and Regulations § 385.7 provides:

"Sanctions, (a) a person who:

(1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof; or

(2) without good cause fails or refuses to undergo a necessary medical examination or treatment; or

(3) is required under this Part to receive manpower services and certification and without good cause fails or refuses to accept manpower services and certification; or

(4) is required under this Part to pick up his check semi-monthly at the State Employment Service and without good cause fails or refuses to do so; or

(5) without good cause fails or refuses to accept referral to and participate in a vocational rehabilitation program, shall be disqualified from receiving assistance for 30 days thereafter and until such time as he is willing to comply with the requirements of this Part, except that an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part."

Questions Presented

1. Whether the Constitution of the United States prohibits a State Legislature from defining eligibility for assistance in a totally state funded program by the use of a rebuttable presumption where the fact to be proved is logically connected to the facts giving rise to the presumption and where the fact to be proved is entirely within the knowledge and control of the applicant?

The Court below answered "yes". Appellant contends that the answer should be "no".

2. Whether an applicant for public assistance is deprived of a meaningful opportunity to present evidence to overcome a rebuttable presumption as to his eligibility because a fair hearing may be scheduled as long as 30 days after request even though he could present that evidence to the local Social Services Agency at any time?

The Court below answered "yes". Appellant contends the answer should be "no".

3. Whether there was a justiciable controversy before the Court below to justify its enjoining provisions affecting applicants for AFDC when there were no plaintiffs who were applicants for AFDC when the provisions affecting AFDC applicants are substantially different from those affecting HR applicants and when applicable federal law affects the eligibility of AFDC applicants who have recently terminated their employment but not that of HR applicants?

The Court below answered "yes" and extended its order to include persons not represented before it. Appellant contends that the answer should be "no" and that the reach of its order had to be limited to the class of HR applicants to which all named plaintiffs belonged.

Statement of the Case

A. State Statute and Regulation

The statute and regulation that were declared partially invalid by the district court, New York Social Services Law (NYSSL) § 131(11), (p. 3, *supra*) and 18 N.Y.C.R.R. § 385.7 (p. 4, *supra*) also see 18 N.Y.C.R.R. § 385.6(b)

[p. 3, *supra*]) condition eligibility for public assistance for persons who have recently voluntarily terminated employment. If that termination is for the purpose of obtaining public assistance or an increased grant, the person is not eligible for receiving that public assistance for seventy-five days. Because a purpose behind a person's terminating his employment is always within his knowledge and frequently unknown to others, the statute creates a rebuttable presumption that if there is a voluntary termination of employment and an application for public assistance within seventy-five days, the purpose of that termination was to receive public assistance. However, the applicant can introduce evidence to show that that was not his purpose. *Id.*

That evidence may be produced at the local Social Services office at the first interview or at any time thereafter just as any verification of data relating to eligibility may be produced. 18 NYCRR §§ 351.6, 351.8.

The intent of the legislature in enacting the provision was to deter persons from leaving employment without being able to sustain themselves for a reasonable period of time on the assumption that they would receive public support. As the Governor stated in approving the bill (L. 1971, Ch. 946):

> "The bill is designed to provide increased opportunities for gainful employment to persons who are presently dependent upon the welfare system and to deter gainfully employed persons from leaving their jobs in order to obtain public assistance, as I recommended to the Legislature in my Special Message on Welfare and Work.
>
> State employment offices will be required to establish special programs for unskilled workers and public assistance recipients. These programs will include the development and maintenance of job registers and specialized preparation and counseling to develop productive members of the work force." ("McKinney's Session Laws of New York 194th Session, Laws of the Regular Session, 1971", Vol. 2, pp. 2636-7.)

The legislature found that the availability of public assistance could be a disincentive to work and self-sufficiency. This statute is precisely designed to counteract that situation, because it does not affect the eligibility of persons who lost their employment involuntarily or who terminated their employment without regard to the availability of public assistance. A further purpose was to confine the finite sums appropriated for relieving poverty to the use of persons unable to provide for themselves.

Although public assistance is intended to meet basic needs of persons unable to support themselves, some employable persons may voluntarily terminate their employment, intending to support themselves by public assistance. This may not be a long term goal. They may intend only to rely on public assistance until they obtain new or more desirable employment. There is nothing "bad" about their motives (Compare Opinion of the Court below [10a]); but they cause an unnecessary drain on the public fisc and take a share of the finite public resources devoted to persons *unable* to support themselves.

This statute complements the public policy enunciated in the Labor Law for unemployment insurance, e.g., Labor Law §§ 501, 593. Persons who voluntarily terminate their employment without good cause are not eligible for unemployment insurance. *Id.* The statute reflects a policy that persons are responsible to support themselves wherever possible. If such persons automatically were eligible for public assistance, the Social Services Law would undermine the Labor Law. By creating a period of seventy-five days of ineligibility for persons who voluntarily terminate employment without good cause for the purpose of receiving public assistance, the deterrent effect of the Unemployment Insurance Law is not diluted, while destitute persons are not permanently cut off from public welfare funds.

The State regulations (18 NYCRR §§ 385.6(b), 385.7) track the statute except that the Commissioner reduced the period giving rise to the presumption and the period of ineligibility for recipients of AFDC to 30 days.* Thus, an applicant for AFDC who voluntarily terminated his employment and applied for AFDC more than 30 days but less than 75 days after that termination would not be required to rebut the presumption. Similarly, a person who did terminate his employment for the purpose of obtaining assistance would be eligible for AFDC on the 31st day after the termination.**

The purpose of this change was to dovetail with provisions of the Social Security Act relating to eligibility for AFDC when the father has been unemployed for at least 30 days. 42 U.S.C. § 607(b)(1) AFDC-U. It should be noted that the provision of the Federal statute is far broader than the State statute and regulation, since under the federal law the whole family is ineligible for 30 days and this is so even if the father lost his job involuntarily.

The provisions attacked also parallel federal law prohibiting recipients of federally aided categories of assistance from abandoning employment mandated as a condition for obtaining assistance, 42 U.S.C. §§ 602(a)(19)(F), 633(g), 29 CFR § 57.13, 45 CFR § 233.11.

The sanction period of ineligibility for refusal to participate in the Federal Work Incentive Program (WIN) is 90 days (29 CFR § 57.13)—longer than the 75 days imposed on HR applicants under NYSSL § 131(10).

---

* The Court below apparently did not understand the regulation since it consistently referred to the 75 day sanction period with regard to AFDC recipients. The effect of the statute on AFDC recipients was not discussed by the parties, since all the plaintiffs and applicants for intervention were applicants for HR.

** Even the 30 day sanction does not apply to needy children who are immediately eligible for assistance even though the caretaker adult voluntarily terminated employment for the purpose of obtaining public assistance. Compare 42 U.S. § 607(b)(1).

B. The Plaintiffs

All of the plaintiffs and applicants for intervention in the district court were applicants for receipt of public assistance in the HR category. Home relief is defined in NYSSL § 158(a):

> "Any person unable to provide for himself, or who is unable to secure support from a legally responsible relative, who is not receiving needed assistance or care under other provisions of this Chapter, or from other sources, shall be eligible for home relief."

The other provisions referred to are Aid to the Aged, Blind and Disabled, and to Dependent Children, which programs are supported by the Federal government and to which the substantive provisions of the Social Security Act apply. But assistance to needy persons not included within the federal categories is provided only by State law and thus eligibility is defined solely in State Law. All of the plaintiffs are individual recipients, not members of an assistance family or group.*

1. *Ronald Milne*

The original plaintiff in this case, Ronald Milne, claimed that he did not voluntarily terminate his employment but was forced to resign as a security guard at Columbia University. He was denied assistance by the Westchester County Department of Social Services on the basis of NYSSL § 131(11) on November 16, 1974, the day he applied (he had terminated his employment on November 9, 1974). The County Commissioner (then, defendant Berman) reconsidered his decision and determined Milne to be eligible as of November 16, 1975. Thus his complaint was moot before the three-judge Court hearing.

---

* While the Beverly brothers apparently lived together, they did not seek assistance as a family. In fact, only Joseph Beverly ever applied for assistance. (pp. 10-11, *infra*).

2. *Robert C. Lee*

Intervention on the part of Robert C. Lee was ordered by Judge Wyatt on March 27, 1974. Lee's employment as a machinist had been terminated on January 14, 1974 " 'due to a combination of excessive excused and unexcused lateness and absenteeism which proved discriminative to . . . [the] production schedule' " (Compl't ¶ 16). On January 29, 1974, he applied for public assistance. The Westchester County Department of Social Services denied his application on January 31, 1974. Apparently the local agency had found that he deliberately provoked his discharge to obtain public assistance.

On February 4, 1974, Mr. Lee filed an order to show cause and an application for a temporary restraining order in the United States District Court for the Southern District of New York which granted the restraining order, prohibiting the enforcement of the provisions of NYSSL § 131(11) against Intervenor Lee. The next day he requested a fair hearing. The hearing was scheduled on April 4, 1974. The hearing was adjourned upon a misunderstanding on the part of the local agency that Lee's status as a plaintiff in the Federal proceeding prevented the Department from holding a hearing on eligibility. However during all this time Mr. Lee was receiving public assistance benefits pursuant to the District Court's order.* On April 25, 1974, he defaulted at the hearing. Because Defendant Lavine did not deprive him of any benefit his complaint against the State defendant is moot.

---

* The opinion below criticizes the lateness of the hearing in the Lee case calling it a "Catch-22 approach to procedural due process" (15a). But Lee had been receiving assistance since the day *before he requested* a fair hearing. The Court's intemperate criticism of the State hearing procedure is inexplicable since it was the Court's order that required Lee to receive assistance pending the final determination in this case. Appellant's affidavit (Maher affidavit p. 8) also explained the fact. However plain-

(footnote continued on following page)

3. *Douglas Streeter*

Leave to intervene as a plaintiff was also granted to Streeter on March 27, 1974. Streeter's employment in a nursing home was terminated on January 4, 1974, after he claimed to be sick over the New Year holiday. He had previously sought public assistance after leaving a job (Streeter's complaint, ¶ 15). He applied for public assistance on January 13, 1974 to the Westchester County Department of Social Services. On January 16, 1974, the local agency found that he was ineligible for home relief. Streeter requested a fair hearing on January 28, 1974. On January 25, 1974, he had sought to intervene as a plaintiff in this case. On or about Feb[illegible]ary 4, 1974, the County Commissioner consented to grant assistance to Streeter pending the outcome of the proceeding.

A fair hearing was originally scheduled on February 28, 1974, but a month's adjournment was granted to the local agency because of the pendency of this proceeding as with Lee (p. 10, *supra*) and on assurance that Streeter was actually receiving assistance. A hearing was held on March 20, 1974 and on April 4, 1974, the decision reversing the local agency was rendered (Exhibit "C" appended to Maher Aff.). Streeter was found eligible for assistance. Thus appellee Streeter's complaint was moot before the three-judge district court's hearing.

4. *The Brothers Beverly*

Four brothers, Joseph, Odell, John and Willie Beverly were granted leave to intervene as plaintiffs on the complaint that Social Services Law § 131(11) had been unconstitutionally applied to them by the Ontario County Social Services Department, making them ineligible for public

---

(footnote continued from preceding page)

tiff's statement pursuant to Local Rule 9(g) (p. 10) submitted on the motion for summary judgment did not mention the restraining order issued by the District Court.

assistance. Actually only Joseph Beverly had ever applied for public assistance. (Maher Aff., Exhibit "E", pp. 15-16). The complaint of the other three should have been dismissed because they had no cause of action against any defendant. Since only Joseph worked regularly (Maher aff., Exhibit "E", p. 9) it is not clear that the presumption contained in NYSSL § 131(11) and 18 N.Y.C.R.R. § 385.6(b) would have been applied to the others.

Joseph terminated his employment with a produce company, claiming that after eviction from one place, he had no other place to live. Assistance had been denied on January 29, 1974. No request for a fair hearing was received until February 26, 1974. A hearing was held on March 14, 1974 and a decision denying assistance was rendered on March 28, 1974. The Commissioner found that Joseph Beverly had a place to live and had terminated his employment for the purpose of obtaining public assistance. (Maher aff., Exhibits "D", "E").

C. Prior Proceedings

This action was begun by Ronald Milne's filing his summons and complaint on December 19, 1973. Numerous proceedings involving intervention, requests for temporary restraining orders and discovery were held before the single judge district Court (WYATT, D.J.) between January 10, 1974 and May 10, 1974 when the three-judge district Court heard arguments on the cross motions for summary judgment and on the class action order (Docket Sheets).

Judge Wyatt determined that a three-judge Court should be convened pursuant to 28 U.S.C. §§ 2281, 2284 on February 20, 1974. Defendants had agreed that a three-judge court was required.

On November 11, 1974, the three-judge Court issued its opinion that the presumption contained in the second sentence of NYSSL § 131(11) and 18 N.Y.C.R.R. § 385.6(b)* was unconstitutional and should be enjoined (1a *et seq.*). The opinion closed "Settle an order or orders". Both sides submitted proposed orders differing on the definition of the class of persons affected. Appellees relying on the Court's opinion included recipients of AFDC. Appellant defined the class as applicants for HR since no plaintiff had applied for AFDC since the regulations affected AFDC recipients differently, and because Federal law had an impact on the eligibility of AFDC applicants relevant to this statute which it did not on applicants for the HR program.

Before the order was signed appellees brought a motion to cite appellant for contempt, claiming that the opinion itself was an order. On December 20, 1974, the Court granted the motion

> ". . . to the extent that Defendant Lavine will cause to be sent a letter on or before January 6, 1975, to all those members of the Class denied home relief assistance since November 12, 1974, advising such members that they may reapply for such assistance retroactive to November 12, 1974 . . ."

On December 13, 1974 the three-judge Court had entered a final judgment and order (17a) which enjoined the operation of the statute and regulation in the case of AFDC, as well as HR applicants. On January 22, 1975, upon the request of appellant, the Court stayed so much of the order as applied to applicants of AFDC pending the determination of this appeal (18a).

The notice of appeal to this Court was filed on January 10, 1975 (20a).

---

* While the Court enjoined "18 N.Y.C.R.R. § 385.7", the presumption is actually contained in § 385.6(b).

Argument

The District Court opinion if upheld invalidates the use of a *rebuttable* presumption against one applying for a state benefit. This Court has never invalidated the use of such a presumption in a Civil proceeding. The District Court invaded the province of the Legislature in setting standards of proof in a state administrative procedure. The Court discounted the fact that the statute gave the applicant the right to introduce "evidence to the contrary". The presumpion at issue doesn't reverse the burden of proof or of coming forward applicable in this proceeding.

The fact at issue is solely within the knowledge and control of the applicant but the District Court held that whether or not to apply a presumption in such a case is "a question of policy" and, denigrating the Legislature's policy determination, the Court made its own.

The District Court also stated that the applicant's only opportunity to present evidence was at the fair hearing reviewing his denial of assistance and that this was a denial of his right to due process. By ignoring the applicant's right to present rebuttal evidence to the local agency during and even after the application procedure, the Court seems to require the grant of assistance on demand pending the determination of eligibility at a formal hearing. The fiscal and conceptual implications of this decision would have a staggering impact on the administration of public assistance when the economy is already placing enormous pressures on it.

The District Court not only invaded the substantive province of the Legislature; but procedurally it overreached as well. All plaintiffs and applicants for intervention were seeking assistance for themselves as individuals under the HR category. Nonetheless the District Court declared invalid separate provisions of the statute and regulation affecting applicants for AFDC.

The affect on AFDC applicants is very different from that on HR applicants, although the Court did not acknowledge that. In the case of an application for AFDC the presumption arises only if assistance is sought within 30, rather than 75, days of voluntary termination of employment (18 N.Y.C.R.R. § 385.6[b]) and AFDC recipients are only ineligible for assistance for 30, rather than 75, days after voluntary termination of employment (18 N.Y.C.R.R. § 385.7[5]). The affect of this presumption on AFDC applicants is less restrictive than that imposed by Congress on the same family. If eligibility is claimed because a father is unemployed, the entire family is ineligible until he has been unmployed for at least 30 days. Under the WIN program AFDC recipients similarly are prohibited from voluntarily terminating their employment.

The decision below substantially oversteps the bounds of judicial power in direct contravention of the consistent teachings of this Court. The District Court's misunderstanding of the nature of a rebuttable presumption and of the procedure for applying for State benefits can only be corrected by this Court's granting plenary review.

A.

This appeal raises a substantial issue as to the reasonableness of a rebuttable statutory presumption which arises in an application proceeding and which deals with facts which are wholly within the knowledge and control of the applicant.

1. The presumption does not deny the applicant due process of law because it can be rebutted

The District Court invalidated a rebuttable presumption applied in determining eligbility for State funded assistance on the ground that there was not a sufficient connection between the "known fact" and the "presumed fact".

In doing so it relied in part on two decisions of this Court invalidating irrebuttable presumptions (6a). *United States Dept. of Agriculture* v. *Murry*, 413 U.S. 508 (1973) (conclusion that a household is not in need of food stamps from fact that one person over 18 is claimed as a dependent for Federal income tax purposes by a person not a member of the household); *Vlandis* v. *Kline*, 412 U.S. 441 (1973) (conclusion that college student is not a Connecticut resident from fact that he was not a resident the year before he was admitted).

These opinions do not support the decision of the Court below. There is no more than a semantic resemblance between a rebuttable presumption like that presented here and the irrebuttable ones invalidated in those cases. In fact Wigmore says that a conclusive presumption is not a presumption at all. "Wigmore on Evidence," Third Edition, Vol. IX, § 249 (p. 292). The very criticism of an irrebuttable presumption is that no evidence on the subject is even considered.

In *Stanley* v. *Illinois*, 405 U.S. 645 (1972), this Court specifically approved a rebuttable presumption of unfitness of an unwed father, but rejected an irrebuttable one (*Id.* at 654-5):

> "It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. It may also be that Stanley is such a parent and that his children should be placed in other hands. But all unmarried fathers are not in this category; some are wholly suited to have custody of their children. This much the State readily concedes, and nothing in this record indicates that Stanley is or has been a neglectful father who has not cared for his children. Given the opportunity to make his case, Stanley may have been seen to be deserving of custody of his offspring." [marginal notes omitted].

In *Carrington* v. *Rash*, 380 U.S. 89 (1965), this Court struck down a Texas statute permanently prohibiting men who entered the Armed Services from another State from being eligible to vote in Texas while serving in the military. The evil was ". . . forbidding a soldier ever to controvert the presumption of non-residence". *Id.* at 96. In *Vlandis* v. *Kline, supra*, this Court struck down the unlimited conclusive presumption of out-of-state residence in determining the fees of a public University; but specifically upheld a rebuttable one.

2. The presumption applied in this administrative proceeding does not shift the burden of proof or of going forward.

The District Court also relied on three decisions of this Court as to the validity of invoking a presumption against a defendant in a criminal case. *Leary* v. *United States*, 395 U.S. 6 (1969) (knowledge of illegal importation of marijuana presumed from its possession); *United States* v. *Romano*, 382 U.S. 136 (1965) (illegal production of liquor presumed from presence at the site of an illegal still); *Tot* v. *United States*, 319 U.S. 463 (1943) (presumption that a firearm was received in interstate or foreign commerce after the effective date of the statute from the fact that a defendant who had formerly been convicted of a crime of violence had it in his possession).

It also relied on the unusual decision of the District Court in Georgia in *DeKalb Real Estate Board* v. *Chairman and Board of Commissioners*, 372 F. Supp. 748 (N.D. Ga. 1973). That case involved a presumption that a Real Estate broker had violated an anti-blockbusting ordinance from the existence of a "For Sale" sign with his name located on residential real estate. Apparently the violation of that ordinance was a crime or closely akin to a crime (*Id.* at 756) and the Court relied almost exclusively on criminal cases (*Id. at* 752-4).

The possibility that a presumption will constitute a denial of due process of law is far greater in a criminal conviction than it is in a civil proceeding. A criminal defendant is presumed innocent and the prosecution has the burden of proving each element of the crime. A presumption in that case reverses the burden of proof and the burden of going forward. The standard of rationality which a presumption in a criminal trial must meet is far stricter than that in a civil case. This Court emphasized the special nature of a presumption used in a criminal trial in *Leary, supra* at 35 and at 55 (BLACK concurring) and in *Romano, supra* at 144.

There is no reversal of the burden of proof or the burden of going forward presented here. The applicant for assistance has the obligation to provide the information necessary to establish eligibility. Indeed the presumption here merely clarifies the duty of the applicant to introduce evidence of his purpose in voluntarily terminating his employment. E.g. 18 N.Y.C.R.R. §§ 351.6, 351.8.

The Court below did cite two decisions of this Court in which rebuttable presumptions in civil cases were discussed (p. 6a); but in both cases the presumptions were sustained. *Bandini Petroleum Co.* v. *Superior Court,* 284 U.S. 8 (1931) (waste of natural gas presumed from its release); *Mobile J & K.C.R. Co.* v. *Turnipseed,* 219 U.S. 35 (1910) (negligence presumed from proof of injury inflicted by the running of locomotives on railway cars).

The only support for the Court's opinion is found in a Florida District Court opinion, *Owens* v. *Roberts,* 377 F. Supp. 45 (M.D. Fla. 1974). Two presumptions were at issue in that case, one rebuttable and one irrebuttable. Both were invalidated. The irrebuttable presumption was that a fraudulent transfer of assets is presumed from the transfer of an asset worth at least $600 for less than its value. The injunction of that irrebuttable presumption does not support the decision below. But the Court went

farther and enjoined a rebuttable presumption of ineligibility for public assistance from the fact that a person transferred an asset within two years prior to or during receipt of assistance. In the Court's discussion it substituted its personal policies and perceptions of a "typical honest welfare recipient" (*Id.* at 53) for that of the Legislature just as the Court below did. Compare *Leary* v. *United States, supra; Tot* v. *United States, supra; Mobile J. & K.C.R. Co.* v. *Turnipseed, supra; Snell* v. *Wyman,* 281 F. Supp. 853 (S.D.N.Y. 1968), aff'd 393 U.S. 323 (1969). However unlike this case, the Court also had alternative grounds, finding the statute in violation of the Social Security Act.

In *Owens, supra* the consequence of a sustaining of the presumption was far more severe. In that case aged and disabled recipients were found to be ineligible for any assistance for two years. Here an able bodied person would be ineligible for only 75 days and an applicant for AFDC for only 30 days. The statute does not apply to the Aged, Blind and Disabled.

In *Vlandis* v. *Kline, supra,* this Court emphasized the importance of the duration of the disability as a factor in assessing the rationality of a rule of evidence. It struck down a permanent irrebuttable presumption of non-residence but approved a conclusive presumption of non-residence for one year. *Id.* at 450-4. Also see *Starns* v. *Malkerson,* 326 F. Supp. 234 (D. Minn. 1970) aff'd. 401 U.S. 985 (1971). The limited period of ineligibility at issue here supports the rationality of the presumption.

3. In the absence of evidence to the contrary, it is rational to find that a person quit his job with the intent of obtaining public assistance, if he applies for that assistance shortly after he terminated his employment.

The Florida District Court also criticized the State statute and regulation for being over-broad. *Owens* v. *Roberts, supra.* The New York statute and regulations are precisely

drawn to affect only the persons who could have been deterred by its provisions, since deterrence is the purpose of the statute. It could have made all recently employed persons ineligible for public assistance for a fixed period of time. Congress did that in defining eligibility for AFDC-U [42 U.S.C. § 607(b)(1)]. It could have made all persons who voluntarily terminated their employment ineligible for assistance permanently or for a given period of time. In neither instance would the Fourteenth Amendment be violated. Instead the presumption only is triggered when a person *voluntarily* terminates his employment and within a short time applies for public assistance. The voluntary termination of employment combined with a contemporaneous allegation of destitution is some evidence that at the time of termination the applicant intended to seek public support. At the very least there is a rational relationship between the proven fact and the presumed fact.

The standard by which the validity of a rebuttable presumption is measured in a Civil case was stated in *Mobile J. & K.C.R.R.* v. *Turnipseed, supra* at 43:

> "That a legislative presumption of one fact from evidence of another may not constitute a denial of due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact thus presumed."

Certainly the connection between the fact proved and that inferred in this case is not purely arbitrary. Even the District Court did not find the presumption to be entirely arbitrary. It merely said that most people do not leave their employment to obtain public assistance (pp.

7a-9a). That does not show that the relationship between the two sets of facts is irrational. The purpose of the statute is to deter people from leaving employment. If it works well there will be few people who will terminate employment without the ability to support themselves in the short run and, of those, fewer still who will not be able to overcome the presumption.

The District Court emphasized (8a) that illness was a reason commonly ascribed for leaving employment, suggesting that persons who were ill would be sanctioned under this program, but that is not the case. If the termination of employment was involuntary,* the presumption would not arise. If it was a voluntary termination, proof of illness would overcome the presumption. Verification of illness is specifically referred to as evidence which would rebut the presumption (Maher aff. pp. 5-6, Exh. A).

The District Court cited some statistics and a smattering of reports and concluded (p. 8a):

> 'We do not think it can be stated as a general rule, as the statutory presumption would have it, that poor people do not have the same desire to work and to obtain the fruits of work as the non-poor."

If that straw man were the statutory presumption at issue the materials would be relevant. No bad motive is imputed to any applicant by the Legislature. Indeed a better argument could be made for a holding that the District Court had irrationally imputed a bad motive to the Legislature which actually appropriates the resources for the support of all needy persons.

---

* The District Court noted that appellees Milne and Streeter did not voluntarily terminate their employment and that the presumption was misapplied to them (15a, n. 4). Misapplication of a statute is not grounds for invalidating it. Appellant Lavine took steps to prevent misapplication after these cases were brought to his attention (Maher aff. pp. 5-6, Exhibit A).

The Court below ignored the fact that people with other reasons for leaving their jobs also may intend to obtain public support, at least in the short run. Most people work to obtain money to support themselves. Many people have non-frivolous dissatisfactions with their jobs from time to time; but it is not usual to terminate one's employment voluntarily without a notion of how one will keep the wolf from the door until a new source of income is found. The Legislature did not want the availability of public assistance to induce people to leave their jobs without providing for their own support for a reasonable period thereafter.*

It should be noted that HR recipients do not have a basic disability in supporting themselves, such as health age or the necessity to care for children, as do the recipients of the categories of assistance partially supported by Federal funds.

4. The enactment of this presumption was a proper exercise of Legislative power

In discounting the reasoning of the Legislature, the District Court substituted its own judgment in contravention of this Court's repeated statements that such overreaching is impermissible. E.g. *San Antonio School District* v. *Rodriquez,* 411 U.S. 1, 33-4 (1973); *Dandridge* v. *Williams,* 397 U.S. 471, 487 (1970).

---

* The Court suggested that 75 days was too long a period (p. 10a); but the length of time is strictly a matter of state policy for the measurement of which there are no judicially cognizable standards. In fact the named plaintiffs applied much more quickly after leaving their jobs. Milne applied 7 days after terminating employment; Lee applied 15 days after his employment was terminated; Streeter applied 9 days after his employment was terminated; Joseph Beverly left his job after receiving his pay on January 25, 1974, and applied for assistance four days later. Obviously proximity of the time of application to termination is a relevant factor in determining whether the applicant intended to obtain assistance.

The Court below rejected these decisions as irrelevant because they dealt with the right to equal protection of laws; but the same deference to legislative discretion is required if a statute is attacked on the basis of due process clause of the Fourteenth Amendment. E.g. *Ferguson* v. *Skrupa,* 372 U.S. 726, 728-30 (1963); *Snell* v. *Wyman,* 281 F. Supp. 853, 862-3 (S.D.N.Y. 1968), aff'd 393 U.S. 323 (1969). The judicial restraint exercised by the Court in *Snell, supra,* is in marked contrast to the overreaching of this decision. The *Snell* decision was specifically approved by this Court in *Dandridge* v. *Williams, supra* at 485.

This Court's decision in *Hagans* v. *Lavine,* — U.S. —, 94 S. Ct. 1372 (1974), regarding Federal jurisdiction did not overrule the substantive holdings of *San Antonio School District* v. *Rodriguez, supra* or *Dandridge* v. *Williams, supra,* as was suggested by the District Court (11a).

5. It is reasonable to require an applicant for assistance to provide relevant evidence which is entirely within his possession.

The imposition of the presumption on applicants for assistance is particularly appropriate in this instance because the fact to be proved is peculiarly within the knowledge and control of the applicant. It is his intent that is at issue. His oral statements will frequently be enough to overcome the presumption. Since the applicant has the burden of proving his eligibility in any event, it was reasonable of the Legislature to require him to introduce evidence to prove that he did not intend to be supported by the public after he terminated his employment. "Wigmore on Evidence", Third Edition, Vol. IX, § 2486, p. 275:

> "the burden of proving a fact is said to be put on the *party who presumably has peculiar means of knowledge* enabling him to prove its falsity if it is false. This principle has received frequent applica-

tion in modern statutes making it an offense to pursue a certain occupation without a *State* license or forbidding a certain act unless in personal circumstances justifying an exception."

Also see *Campbell* v. *United States*, 365 U.S. 85, 96 (1961) (defendant has right to production of statements and reports of government witnesses); *United States* v. *N.Y.N.H. & H. R.R. Co.*, 355 U.S. 253, 256 n. 5 (1957) (carrier has the burden of proving the correctness of its bills); *G.E.J. Corp.* v. *Uranium Aire, Inc.*, 311 F. 2d 749, 751 (9th Cir. 1962) (to defend its option the defendant had the burden of proving the quality of its mines).

While the control of the fact to be proved may not be an independent justification for creating a presumption (*Tot* v. *United States, supra* at 467-8), where the facts proved are related to the facts to be determined, it is reasonable to place the burden of coming forward on the party with the peculiar knowledge of the subject matter.

The District Court rejected this reasoning, stating that it was a "question of policy" (10a) whether to employ the presumption. With no further ado the Court enunciated its policy which is contrary to the State Legislature's. The legislating of rules of evidence always is a "question of policy"; but questions of policy are, by definition, the exclusive province of democratically elected legislatures, e.g., *Dandridge* v. *Williams, supra.*

B.

This appeal raises a substantial question whether a trial type formal hearing is required prior to the use of a rebuttable presumption to determine eligibility for State benefits.

Evidence to rebut the presumption contained in NYSSL § 131(11) and 18 N.Y.C.R.R. § 385.6(b) can be presented to the local agency at any time, even after assistance has been denied. The local Commissioner has the power to reconsider a prior determination as he did in the case of Milne (p. 9, *supra*). The Court below inexplicably ignored the procedures at the application stage.

The Court suggested* that the formal State fair hearings were not scheduled promptly enough to afford plaintiffs their right to due process of law. At the time this suit was brought defendant Lavine was subject to a permanent injunction governing review of denials of assistance. The Department's performance was being monitored by the United States District Court for the Southern District of New York (MOTLEY, D.J.). *Nelson* v. *Sugarman.* See 361 F. Supp. 1132 ( ) S.D.N.Y. 1971 ( ) (permanent injunction issued 12/11/73.) The injunction required that a fair hearing decision be rendered within 90 days of the request following the denial of an application for assistance.

Since all plaintiffs were members of the class granted the injunction in *Nelson, supra,* the District Court in this case was bound by Judge Motley's determination.

Plaintiffs could not be afforded any special consideration in scheduling fair hearings. All other applicants who had been denied for reasons other than ineligibility under NYSSL § 131(11) also claim to be destitute.

The only named plaintiff who was not receiving assistance at the time the fair hearing was held was Joseph Beverly and the hearing was scheduled promptly. Beverly's request for a hearing was received on February 26, 1974, a hearing was held on March 14, 1974 and a decision rendered on March 28, 1974.

---

* The Court stated that it did not reach the question whether applicants have an opportunity to rebut the presumption prior to their denial of assistance (5a), but parenthetically it stated that there is no opportunity to present evidence except at a belated fair hearing (15a n. 5). It is the purpose of this section to answer that misguided statement.

The District Court's reference to Lee's hearing (15a, n. 4) was completely inaccurate. In the first place, he had been granted assistance by the District Court even before he requested a fair hearing so any delay would not work to his disadvantage. Secondly he defaulted at his hearing on April 25, 1974 and never sought reconsideration of the local Commissioner's denial.

In any event the procedure before the local agency sufficiently comports with the requirements of due process of law which is a flexible concept adjusted to the particular nature of the hearing.

In *Torres* v. *New York State Department of Labor,* 333 F. Supp. 341 (S.D.N.Y. 1971), aff'd 405 U.S. 949 (1972)*, the Court upheld the hearing procedure employed before unemployment insurance benefits are suspended which includes an interview and an opportunity to present favorable facts. The application procedure for public assistance is the same as for unemployment insurance and this case is even stronger since the issue is initial eligibility rather than the termination of assistance previously granted.

In *Arnett* v. *Kennedy,* 416 U.S. 202 (1974), this Court held that a federal employee could be discharged before he had a trial-type pre-termination hearing. Yet the Court below suggested that a trial-type hearing was required before an *application* for benefits could be denied. The result of such a policy would mean that the mere application for assistance would warrant the granting of it pending the outcome of a trial-type fair hearing. This waste of precious resources is not required by the Constitution.

---

* The Court reiterated its previous decision in *Torres* v. *New York State Department of Labor,* 321 F. Supp. 432 (S.D.N.Y. 1971), vacated and remanded 402 U.S. 968 (1971).

C.

This appeal presents a substantial issue as to the scope of judicial power to enjoin statutory provisions relating to a class of persons when no plaintiff was a member of that class.

The District Court enjoined the provisions of NYSSL (§ 131(11) and 18 N.Y.C.R.R. § 385.6(b)(1) both with regard to applicants for HR and AFDC (18a) although the affect on each group is significantly different and although no plaintiff was a recipient of AFDC. The record* before the Court below was silent as to the application of the law to AFDC recipients.** There was no evidence that the presumption at issue had ever affected an AFDC recipient.

The presumption is triggered in the case of an AFDC applicant only if he applies for assistance within 30 days of the termination of his employment. For HR recipients it is 75 days. The Court did not discuss whether an application for assistance within 30, rather than 75, days was a rational basis for the presumption.

It would be anomalous to vacate a presumption which might sanction a caretaker adult of an AFDC family for 30 days if he failed to overcome the presumption when there is an absolute sanction on assistance for a whole family for 30 days after an involuntary termination of employment if it is family with an unemployed father.

Federal law applies to AFDC families; but the Court below did not explore its implications. The state regulations

---

* The only discussion of AFDC recipients before the District Court was contained in the memoranda submitted in support of the counter-orders.

** Apparently the record was so sparse that the Court misunderstood the provisions affecting applicants for AFDC. It assumed that they were identical with HR applicants and that an application within 75 days of voluntary termination of employment gave rise to the presumption in AFDC cases, as well.

were approved by HEW. Federal law specifically defines the AFDC recipient's obligation to work e.g. S. 42 U.S.C. § 602(a) (19); 45 C.F.R. § 233.11. Generally see *N. Y. St. Dep't of Social Services* v. *Dublino*, 413 U.S. 405 (1973).

Because all named plaintiffs were applicants for HR and because there are such significant differences in the effect of this presumption on HR and AFDC applicants, the class represented by the named plaintiffs should have included only applicants for HR. In its decision, the District Court recognized that the class consisted of only HR applicants (12a); but then extended its relief to AFDC applicants, as well (12a, 16a, n. 7). Neither the named plaintiffs nor any other HR applicant have a justiciable interest in the presumption as it applies to AFDC recipients.

The Court below was limited in the scope of its order at least by Article III of the Constitution which restricts judicial power to "cases" or "controversies". Had the Constitution intended to allow the courts to make executive and administrative decisions it would not have so limited their power. But this limitation is a necessary concomitant of the separation of powers.

In holding that the Circuit Courts could not administer pension claims under the direction of an officer of the Executive, this Court in 1792 held (*Hayburn's Case*, 2 Dall. 409):

> "That by the Constitution of the United States, the government thereof is divided into three distinct and independent branches, and that it is the duty of each to abstain from, and to oppose, encroachments on either.
>
> That neither the legislative nor the executive branches can constitutionally assign to the judicial any duties but such as are properly judicial, and to be performed in a judicial manner."

In *SCM Corporation* v. *Radio Corporation of America*, 407 F. 2d 166 (2d Cir. 1969), *cert. denied* 395 U. S. 943 (1969), the Court held that the defendant could not counterclaim on the basis of injury to its licensees. *Id.* at 170. In so holding it stated a rule whose analogue is applicable to this case as well:

> "Standing to sue was not given by Congress to any and every citizen who, motivated by public spirit or possibly some baser reason, would set himself up as a watchdog of business behavior. Congress properly bestowed the right to sue only on such persons as might be injured in their business or property *by reason* of anything forbidden in the antitrust laws." *Id.* at 171.

For plaintiffs to be afforded relief not in their own interest is contrary to the basic function of the judicial office of the Courts in this country. *Tileston* v. *Ullman*, 318 U. S. 44 (1943). It has frequently been held that parties cannot agree to bring a test case (*Poe* v. *Ullman*, 367 U. S. 497 [1961]), nor can they seek to attack an entire statute where their rights have not been infringed by all of its provisions. *Electric Bond and Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 443 (1938).

The District Court here was not called on to adjudge the legal right of any applicant for AFDC. Instead it found what it thought to be a violation of a technical statutory requirement in the abstract and overreached to resolve a potential controversy not before it.

This is contrary to the teaching of *De Funis* v. *Odegaard*, 416 U. S. 312 (1974) and *Golden* v. *Zwickler*, 394 U. S. 103 (1969), in which fortuituous circumstances mooted plaintiffs' claims. Nonetheless, this Court held that they could not continue their suits raising very interesting constitutional questions. At the very least, a justiciable contro-

versy must be one presented ". . . in the context of a specific live grievance". *Golden* v. *Zwickler, supra,* at 110.

This limitation on the judiciary is especially strict when the validity of a state statute is at stake, e.g., *Golden* v. *Zwickler, supra.* As this Court analyzed such a question (*Poe* v. *Ullman,* 367 U. S. 497, 503-504):

> "The various doctrines of 'standing,' 'ripeness,' and 'mootness,' which this Court has evolved with particular, though not exclusive, reference to such cases are but several manifestations—each having its own 'varied application'—of the primary conception that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action."

In *Liverpool, N.Y. & P.S.S. Co.* v. *Commissioners,* 113 U. S. 33, 39 (1885), this Court held that the judiciary does not have the power to declare a state statute void:

> "except as it is called upon to adjudge the legal rights of litigants in actual controversies."

In *Muskrat* v. *United States,* 219 U. S. 346 (1911), this Court explained the delicate relations among the organs of government when the validity of a statute is brought before a court (*Id.* at 361):

> "The right to declare a law unconstitutional arises because of an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require the

> court to choose between the fundamental law and a law purporting to be enacted within constitutional authority, but in fact beyond the power delegated to the legislative branch of the Government. This attempt to obtain a judicial declaration of the validity of the act of Congress is not presented in a 'case' or 'controversy', to which, under the Constitution of the United States, the judicial power alone extends."

Similarly, here the decision that provisions of the statute relating to AFDC applicants are in violation of the Constitution is not presented in a "controversy" between plaintiffs and defendants.

CONCLUSION

For the foregoing reasons, this Court should note probable jurisdiction and grant plenary consideration to the instant appeal.

Dated: New York, New York, March 7, 1975.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State of
New York
Attorney for Appellants

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

AMY JUVILER
Assistant Attorney General
of Counsel

APPENDIX A

Opinion of the Three-Judge District Court Granting Declaratory and Injunctive Relief.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

No. 73 Civ. 5397

Ronald Milne, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

Douglas Streeter, Robert C. Lee, Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, by their mother and next friend, Roberta Beverly, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

v.

Leonard Berman, individually and as Commissioner of the Westchester County Department of Social Services, and Abe Lavine, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

George E. Boisvert, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Before OAKES, *Circuit Judge*, BONSAL and WYATT, *District Judges*.

Gerald A. Norlander, White Plains, N. Y. (The Legal Aid Society of Westchester County, White Plains, N. Y., Martin A. Schwartz, Catherine Cronin and Hillary Sohmer, of counsel), for Plaintiffs.

Gerald A. McIntyre, Corning, N. Y. (Monroe County Legal Assistance Corp., Flood Disaster Relief Project), for Intervenor-Plaintiffs.

Amy Juviler, Assistant Attorney General (Louis J. Lefkowitz, Attorney General of the State of New York, of counsel), for Defendant Lavine.

Richard A. McAtamney, White Plains, N.Y. (Harry Lott, Westchester County Attorney), for Defendant Berman.

Harrison Downe, Canandaigua, N. Y., for Intervenor-Defendant.

OPINION

OAKES, *Circuit Judge:*

The named plaintiff and intervenor plaintiffs, welfare recipients, herein collectively "plaintiffs," seek on behalf of themselves and others similarly situated, declaratory relief, injunctive relief, and damages against the Commissioner of the New York State Department of Social Services and the Commissioner of the Westchester County Department of Social Services. Plaintiffs claim that a New York welfare statute, N.Y. Soc. Serv. Law § 131(10)

(McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 N.Y.C.R.R. § 385.7,[1] violate the due process and equal protection clauses of the fourteenth amendment to the United States Constitution. The statute and regulation disqualify from receipt of assistance for 75 days persons who voluntarily terminate their employment or reduce their earning capacity for the purpose of qualifying for Home Relief or Aid to Families with Dependent Children. The claims of plaintiffs, as later more fully discussed, are specifically directed to a further provision of the statute and regulation which states that a person who applies for assistance within 75 days after voluntarily terminating his employment or reducing his earning capacity shall "be deemed" to have done so "for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

Jurisdiction of this court is based upon 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 since plaintiffs' complaint alleges a substantial claim involving the denial by defendants, acting under color of state law, of rights guaranteed by the fourteenth amendment to the United States Constitution. Declaratory relief is sought pursuant to 28 U.S.C. § 2201, injunctive relief under 28 U.S.C. § 2202 and compensatory and punitive damages under 42 U.S.C. § 1983. *See Hagans* v. *Lavine,* 42 U.S.L.W. 4381, 4384-86 (U.S. Mar. 25, 1974).

Because plaintiffs seek to enjoin the enforcement of a state statute, N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973), on the ground that it is contrary to the Constitution of the United States, a three-judge court was convened pursuant to 28 U.S.C. §§ 2281, 2284.

I.

There are before the court motions from three separate movants: plaintiffs, intervenors and defendant Lavine.

The first motions to be considered will be those by plaintiffs (1) for an order determining that the action may be maintained as a class action (Fed. R. Civ. P. 23(c)(1)), and (2) for "final summary judgment in favor of plaintiffs for the declaratory and injunctive relief prayed for in paragraphs (D), (E) and (F) of the Wherefore Clause of the Amended Complaint" (Fed. R. Civ. P. 56). We shall first consider the summary judgment motion and later treat the class action motion.

A. *Summary judgment.*

Section 131(10) of the New York Social Services Law provides as follows:

> Any person who volutarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, *in the absence of evidence to the contrary supplied by such person.*

(Emphasis added.)

Plaintiffs make three basic arguments:

1. The statutory presumption of a wrongful intent to obtain welfare benefits is irrational and thus violates the

due process clause because there is a logically insufficient connection between provable facts (that an applicant voluntarily terminated his emloyment or reduced his earning capacity) and the presumed fact (that he did so for the purpose of qualifying for assistance or a larger amount thereof);

2. The challenged statute operates conclusively to presume essential facts in violation of the due process clause because plaintiffs are not afforded timely hearings—they have no opportunity to rebut the presumption of the statute and regulations at the time they apply for assistance and, by the time the State actually holds a hearing at which rebuttal evidence can be introduced and renders a final decision, the 75 days referred to in the statute have expired; and

3. The statute violates the equal protection clause because it arbitrarily burdens the plaintiffs' class with a presumption of ill motive—other applicants for public assistance being entitled to apply and have their eligibility assessed free of any negative presumption.

Since we agree with the plaintiffs on their first point, it is unnecessary for us at this stage to reach the second or the third.

On its face, the challenged statute provides that a person who applies for public assistance within 75 days after the voluntary termination of his employment is presumed to have terminated his employment "for the purpose of qualifying for . . . assistance . . . , in the absence of evidence to the contrary supplied by such persons." The regulation in question in subparagraph (b) simply restates this.

The statute creates a rebuttable presumption that an applicant terminated his employment with a wrongful purpose that justifies a 75-day hiatus before public assistance begins. A legislative presumption cannot stand, however,

"when it is entirely arbitrary, or creates an invidious discrimination, or operates to deprive a party of a reasonable opportunity to present the pertinent facts in his defense." *Bandini Petroleum Co.* v. *Superior Court,* 284 U.S. 8, 19 (1931) (holding that there was a "manifest connection" between the proven fact, blowing, release or escape of natural gas, and the presumed fact, unreasonable waste). A statutory presumption is not arbitrary only if "it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." *Leary* v. *United States,* 395 U.S. 6, 36 (1969) (presumption of knowledge that marijuana was illegally imported), *following Tot* v. *United States,* 319 U.S. 463 (1943) (the possession of a firearm and ammunition presumptive evidence that the firearm or ammunition was transported or received in violation of the Federal Firearms Act). *Accord, United States* v. *Romano,* 382 U.S. 136 (1965) (possession, custody or control of still, presumed by statute from presence at site unless defendant explains presence violates due process clause). Thus, if there is a logical nexus between the proven fact and the presumed fact, the statutory presumption can be upheld. *Bandini Petroleum Co.* v. *Superior Court, supra; Mobile, Jackson & Kansas City Railroad Co.* v. *Turnipseed,* 219 U.S. 35, 43-44 (1910). But where such a connection is lacking, due process is violated. *United States Department of Agriculture* v. *Murry,* 413 U.S. 508 (1973) (food stamps); *Vlandis* v. *Kline,* 412 U.S. 441 (1973) (resident tuition); *Owens* v. *Roberts,* 377 F. Supp. 45 (M.D. Fla. 1974) (three-judge court) (statute relating to transfer of assets as exclusion from welfare eligibility creates rebuttable but irrational presumption that such transfer was for the purpose of becoming eligible for welfare assistance); *DeKalb Real Estate Board, Inc.* v. *Chairman and Board of Commissioners of Roads,* 372 F. Supp. 748, 753-54 (N.D. Ga. 1973)

(posting of sign by real estate broker improperly creates prima facie case of intentional "block-busting").

We hold that the statutory rebuttable presumption is irrational and in violation of the due process clause because there is an insufficient connection between the known fact, that is, application for public assistance within 75 days of an appellant's termination of employment, and the fact presumed by the statute, that is, that the applicant terminated his employment for the purpose of qualifying for public assistance.

Plaintiffs here are all applicants for Home Relief,[2] even though the challenged statute also encompasses applicants for Aid to Families with Dependent Children (AFDC), 42 U.S.C. §§ 601 *et seq.* For present purposes, we perceive no constitutional difference between financial aid received under the federally assisted AFDC and the New York state and local government program of Home Relief.

The amount of the governmental benefit here involved as Home Relief—exclusive of the limited amount of shelter allowance, said to be $3 per day—is $84 a month for one person in a household, $134 for two, $179 for three, $231 for four, $284 for five, and $329 for six, with each additional eligible needy person in the household being entitled to an additional allowance of $45 monthly. N.Y. Soc. Serv. Law § 131-a(3) (McKinney Supp. 1973). The New York City Human Resources Administration 1972 Annual Report indicates that in that year 142,123 persons were receiving Home Relief in New York City, including 60,531 children, and that the average monthly grant for 66,751 cases was $158.41 or $74.40 per person. On the strength of these sums, we think it cannot be assumed that any substantial number of people would terminate their employment in order to receive assistance. *See Rothstein* v. *Wyman,* 303 F.Supp. 339, 348-49 (S.D.N.Y. 1969), *vacated and remanded on other grounds,* 398 U.S. 275 (1970).[3]

Any number of reasons for terminating employment exist—desire for advancement, problems of health, family problems, transportation problems, personality conflicts, working conditions, and perhaps simply basic discontent with a job, to mention a few.[4] Indeed, the New York City Human Resources Administration 1972 Annual Report states that as many as 23 per cent of the applicants for Home Relief in 1967 left their prior employment due to illness. *Id.* at 62. There may also be numerous reasons why a person who terminates his employment subsequently becomes impoverished and has to resort to a request for public assistance—general economic conditions, a decline in jobs available in a particular industry, health, or failure to receive an anticipated new position. Plaintiff Milne, for example, became needy when his employment insurance benefits were delayed for about two months as the result of an erroneous initial disqualification. Thus we view the statutory presumption compelling an inference that plaintiffs left their employment to obtain Home Relief arbitrary, unreasonable and in violation of due process.

Beyond this, while there may be individual exceptions to the contrary, we do not think it can be stated as a general rule, as the statutory presumption would have it, that poor people do not have the same desire to work and to obtain the fruits of work as the non-poor.

As stated in Work in America, Report of a Special Task Force to the Secretary of Health, Education and Welfare (MIT Press 1973), at 176:

> Underneath the resentment and the frustration, and giving rise to them, are a host of unverified assumptions about the character and composition of the welfare population: most poor people don't want to work; most people on welfare are black; welfare mothers have babies to increase their welfare benefits;

> people on welfare live well and easy; most people on welfare want to be on welfare: etc.
>
> Every one of these assumptions is demonstrably false as a generalization and is true only in the occasional particular. The facts are that most poor people are not on welfare and the majority of poor people not only want to work, but do work, year round and full time; black families, though over represented, make up less than half of the AFDC caseload; the average monthly payment for a recipent on AFDC is $49.60; most mothers on AFDC do want to work—it is not difficult to add to the factual side of this misunderstood issue.
>
> . . . [T]hese false stereotypes of poor people, black people and AFDC families are widely held by the general public.

See also Irelan, Low Income Life Styles, U.S. Department of Health, Education and Welfare, Social and Rehabilitation Service, Office of Research and Demonstration (1967) at 5.

In short, the statutory inference that members of the plaintiffs' class leave their employment to obtain Home Relief is not based upon known facts and experience. Under the cases that we have cited, the statute is therefore unconstitutional in creating a presumption not sustainable in fact.

The State argues, of course, that while the statute creates a presumption it is by definition rebuttable[5] and is not burdened by any special standard of proof. The legislature may, the argument runs, rationally intend to deter persons from leaving employment in the expectation of obtaining public assistance, encourage people to be self-sufficient, reduce the unnecessary invasion of the public fisc and allocate the finite public resources for welfare to

persons unable to support themselves. Agreement with all of these points, however, validates only the first sentence of § 131(10); the arguments do not justify the presumption operative so as to impute bad motive in *all* cases. The State points out that the disqualification is only for 75 days, but to the hungry 75 days is sufficient time in which to starve.[6]

In addition, the State argues that since the motive for terminating employment is within the knowledge of the applicant alone it is reasonable for him to bear the risk of nonpersuasion, citing J. Wigmore, Evidence § 2486, at 275 (3d ed. 1940). But as Wigmore himself points out, placing the burden of proof (or the risk of nonpersuasion) on the party who has "peculiar means of knowledge" "furnishes no universal working rule; if it did, then the plaintiff in an action for defamation charging him to be living in adultery should be required to prove that he is lawfully married." *Id.* What we are concerned with here is a matter of fairness and experience, resolving itself ultimately into a question of policy. In the situation before this court, those persons to whom the presumption is directed are typically the least capable to employ the means to rebut the presumption. This can be best shown by the fact that § 131(10) was applied to several of the intervenors notwithstanding little or no indication that leaving their employment was in any meaningful sense "voluntary," let alone for the purpose of reeciving assistance. *See* note 4, *supra.* To require these persons to prove their innocent motives for terminating employment is effectively to deny them all chances of obtaining the benefits which they seek.

The State relies both on *San Antonio School District* v. *Rodriguez,* 411 U.S. 1, 43-44 (1973), and *Dandridge* v. *Williams,* 397 U.S. 471, 487 (1970), for the proposition that legislative classifications involving questions of economic and social policy must be given due credit whether

we are talking about welfare benefits or the cost of public education. Both *Rodriguez* and *Dandridge,* however, involve the equal protection clause and its limitations, answering negatively whether or not strict scrutiny would apply so as to require the State to justify its particular law by showing a "compelling State interest." We do not reach the equal protection argument, nor need we do so since what we are here concerned with is an invalid presumption as a matter of due process. The State has cited us to no case which would support the presumption here involved, nor does it attempt to answer the "Brandeis-brief" points made by the plaintiffs and, to a certain extent, relied upon by us above. Only recently, in any event, in a suit brought by Cynthia Hagans et al. against the same defendant here, the Supreme Court held that neither *Dandridge* nor *Rodriguez* could be read "to suspend the operation of the Equal Protection Clause in the field of social welfare." *Hagans* v. *Lavine,* 42 U.S.L.W. 4381, 4385 (U.S. Mar. 25, 1974) (also holding that "recouping emergency rent payments from future welfare disbursements . . . [thereby depriving] needy children because of parental fault, was not so 'patently rational' as to require no meaningful consideration" by the courts). The question remains what form of relief will the court give and to whom?

B. *Class action.*

Plaintiffs ask that it be determined that the action may be maintained as a class action. As we view it, the requirements of Rule 23(b)(2) are met as to a class action. The prerequisites of Rule 23(a) are satisfied since the class is so numerous that joinder of all members is impractical; there is a question of law common to the class, *viz.,* whether the rebuttable presumption is rational and in accord with due process; the claims of the representative parties are

typical of the claims of the class; and, represented by the Legal Aid Society, as they are, the representative parties will fairly and adequately protect the interests of the class. This being true, we also find that the defendants have acted or refused to act on grounds generally applicable to the class, *viz.*, on the basis that the statute is rational and constitutional. We therefore declare that the class is composed of all individuals who have been or may hereafter be disentitled to Home Relief on the basis of the statutory presumption of Social Services Law § 131(10) and its supporting regulations.[7]

We declare the second sentence of § 131(10) and the supporting regulations unconstitutional insofar as they impose on Home Relief and AFDC applicants the burden of proving that their voluntary termination of employment was not "for the purpose of qualifying for Home Relief or aid to dependent children, or a larger amount thereof," and we hereby order that the defendants be and they are hereby enjoined from enforcing the provisions of N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973) and 18 N.Y.C.R.R. § 385.7 in that regard.[8]

II.

There is also before the court a motion by Anthony Brownlee and Ethel Reid for an order permitting them to intervene as parties plaintiff. They cite Fed. R. Civ. P. 23 and 24.

We do not find any response to this motion by defendants but at oral argument counsel for these proposed intervenors stated that, in light of the permitted intervention of the Beverlys and the determination by the State in their case, the reason for any intervention by Brownlee and Reid had largely disappeared. Moreover, these proposed intervenors are presumably members of the class as already

defined. As such they may, if so advised, "enter an appearance through . . . counsel." Fed. R. Civ. P. 23(c)(2)(C). There is no reason for them to intervene, and the motion is denied.

III.

There is also before the Court a motion by defendant Lavine for an order granting judgment for defendants "insofar as the complaint claims that Social Services Law § 131(10) is unconstitutional" (citing Fed. R. Civ. P. 12(c)) or in the alternative for summary judgment to the same effect (citing Fed. R. Civ. P. 56(b). In view of our decision on the motion by plaintiffs, this motion by defendant Lavine must be, and is, denied.

Settle an order or orders.

Done this 11th day of November, 1974.

JAMES L. OAKES
U. S. Circuit Judge

DUDLEY B. BONSAL
U. S. District Judge

INZER B. WYATT
U. S. District Judge

Appendix A.

[1] A 1974 amendment to the New York Social Services Law, N.Y. Laws 1974, ch. 621, § 2, renumbered the provisions challenged in this action to N.Y. Soc. Serv. Law § 131(11) (McKinney supp. 1974), although no change was made in the language.

18 N.Y.C.R.R. § 385.7 provides as follows:

> (a). A person who (1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof, or (2) without good cause fails or refuses to undergo a necessary medical examination or treatment, or to accept referral to and participate in a vocational rehabilitation or training program, including the work incentive program, or refuses to accept referral to and work in employment, including work relief, in which he is able to engage, shall be:
>
> (1). disqualified from receiving assistance for thirty (30) days thereafter and until such time as he is willing to comply with the requirements of this Part; except that
>
> (2). an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for seventy-five (75) days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b). Any person who applies for HR or requests an increase in his grant, within seventy-five (75) days after voluntarily terminating employment or reducing his earning capacity or similarly within thirty (30) days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

While subparagraph (a)(2) facially establishes a conclusive presumption, subparagraph (b) appears to modify it by making the presumption rebuttable. It can be argued that the regulation is internally inconsistent.

[2] Persons eligible for assistance in the Home Relief category established pursuant to § 158 of the New York Social Services Law include:

> Any person unable to provide for himself, or who is unable to secure support from a legally responsible relative, who is not receiving needed assistance or care under other provisions of this chapter, or from other sources, shall be eligible for home relief. However, a person who shall be eligible for aid to dependent children according to the provisions of title 10 of this article shall be granted aid to dependent children and while receiving such aid shall not be eligible for home relief.

Appendix A.

N.Y. Soc. Serv. Law § 158(a) (McKinney Supp. 1973). Examples of persons eligible for Home Relief would be needy adults who are not 65 years of age, blind or disabled. So, too, if a father were working 100 hours a month so as to make the family ineligible for ADC, but his earnings were not enough to support the family, the family would get Home Relief.

[3] Moreover, at least in view of the recent United States Supreme Court decision in *New York State Dep't of Soc. Serv.* v. *Dublino*, 413 U.S. 405 (1973), upholding New York State's work rules (against the general attack of preemption), and hence requiring compliance therewith as a condition of eligibility for assistance, N.Y. Soc. Serv. Law § 131(4), it is not reasonable to presume that currently employed persons would terminate their employment to attempt to avoid work.

[4] In order to maintain a clear record, plaintiff Milne resigned his employment of 17 years' standing as a security guard at Columbia University after he had been charged with alleged misconduct. Plaintiff Streeter did not report for work at Lifesavers, Inc., when the company instituted a new rule that required people to shave their beards after being advised that he could not use a mask in place of shaving his beard. After obtaining new employment as an orderly in a nursing home, he became ill and was unable to call his new employer. He was later told that his employment was terminated. Intervenor Lee's employment was terminated because of allegedly excessive absences, but it is not clear that he did indeed terminate voluntarily.

[5] In practice, however, this "rebuttable" presumption becomes irrebuttable. *See Owens* v. *Roberts*, 377 F. Supp. 45 (M.D. Fla. 1974) (three-judge court). Once a person has been denied Home Relief, he may refute the statutory presumption at a subsequent hearing. Plaintiffs' affidavits indicate that the hearing is normally scheduled three to four weeks after it is requested. Under existing procedures, defendants then have up to 60 days to render a decision. *See Nelson* v. *Sugarman*, 361 F. Supp. 1132 (S.D.N.Y. 1971). Quite obviously, a determination of whether the statutory presumption has been rebutted is totally meaningless when it occurs after the 75 day waiting period. This Catch-22 approach to procedural due process is evidenced in the record by the case of intervenor Lee. He was denied emergency relief on January 31, 1974. On February 5, 1974, he requested a hearing. The hearing was held on April 4, 1974, after the statutory 75 day sanction had run.

[6] In this regard the answer of defendant Lavine to plaintiff's interrogatory number 5 is not insignificant. The question was:

> State whether temporary or emergency assistance is granted under Section 133 of the New York Social Services Law, or under any other provision of law or regulation, to needy persons disqualified from receiving assistance under Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, pending decisions after "Fair Hearings" requested by such persons . . . .

The answer given was:

> Temporary emergency assistance under § 133 of the Social Services Act is available by its terms only "pending completion of an investigation;" and thus is unavailable after the local agency has denied assistance, whether that denial is based on § 131(10) or any other provision of the Law . . . .

[7] More specifically, the members of the class are those needy persons residing in New York State who have applied for Home Relief or Aid to Dependent Children within 75 days after voluntarily terminating their employment and who have been, or may be, disqualified from receiving such assistance for any period due to the enforcement and application by defendants of the second sentence of N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973) and regulations issued thereunder.

[8] Any questions of interpretation of this order or of the order establishing the class, other than constitutional questions, as well as of the assessment of damages, may be heard by Judge Wyatt, acting individually. *See Rosado* v. *Wyman*, 397 U.S. 397, 402-03 (1970); *Public Service Comm'n* v. *Brashear Freight Lines*, 312 U.S. 621, 625 (1941); *Hamilton* v. *Nakai*, 453 F.2d 152, 160-61 (9th Cir. 1971), *cert. denied*, 406 U.S. 945 (1972).

APPENDIX B

Final Judgment and Order of the Three-Judge District Court.

This cause having come on to be heard by a three-judge District Court pursuant to 28 U.S.C. §§ 2281 and 2284 to hear and determine plaintiffs' constitutional claims, and plaintiffs having moved for final summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure for the declaratory and injunctive relief prayed for in the amended complaint, and defendant Lavine having moved to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure or in the alternative for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure "insofar as the complaint claims that Social Services Law § 131(10) is unconstitutional", and the three-judge court having considered the pleadings, the written interrogatories and answers thereto, the affidavits and exhibits annexed thereto and the memoranda of points of points and authorities of the parties herein, and the three-judge court having heard oral argument on the 10th day of May, 1974, and the three-judge court having filed its opinion on the 11th day of November, 1974, and the three-judge court having found that there is no genuine issue as to any material fact and that plaintiffs' are entitled to judgment as a matter of law in that the second sentence of New York Social Services Law § 131(11) (McKinney Supp. 1974) violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, it is hereby

ORDERED that defendant Lavine's motion to dismiss the action or in the alternative for summary judgment be and the same hereby is denied, and it is further

Appendix B.

ORDERED that plaintiffs' motion for summary judgment be and the same is granted to the extent set forth below; and it is further

ORDERED, ADJUDGED, AND DECREED that defendants, their offices, agents, servants, employees and successors and all others in active concert and participation with them be and hereby are permanently enjoined from enforcing, against the named plaintiff, the plaintiff-intervenors and all members of the plaintiff class, the presumption contained in the second sentence of New York Social Services Law, § 131(11) (McKinney Supp. 1974) and 18 N.Y.C.R.R. § 385.7 that persons who voluntarily terminated their employment within 75 days preceding their application for Home Relief or Aid To Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance; and it is further

ADJUDGED AND DECREED that plaintiffs are entitled to and are hereby granted a declaratory judgment in this action that the presumption contained in the second sentence of New York Social Services Law, § 131(11) (McKinney Supp. 1974), and in 18 N.Y.C.R.R. § 385.7, that persons who voluntarily terminated their employment within the 75 days preceeding their application for Home Relief or Aid to Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance, violates the Due Process

Appendix B.

Clause of the Fourteenth Amendment to the United States Constitution.

Dated: December 13, 1974
New York, New York

s/ JAMES L. OAKES
Hon. James L. Oakes
United States Circuit Judge

s/ DUDLEY B. BONSAL
Hon. Dudley B. Bonsal
United States District Judge

s/ INZER B. WYATT
Hon. Inzer B. Wyatt
United States District Judge

Judgment Entered:
December 13, 1974

s/ RAYMOND F. BURGHART
Clerk

APPENDIX C

Memorandum Opinion and Order of the Three-Judge District Court Granting a Partial Stay of its Order Pending Appeal.

RONALD MILNE, and others,
Plaintiffs,

—v—

LEONARD BERMAN, and others,
Defendants.

73 Civ. 5397

This is a motion by defendant Lavine for an order staying execution of so much of the final judgment and order of this Court, filed December 13, 1974, as enjoins defendants from enforcing, as against applicants for Aid to Dependent Children (Title 10, New York Social Services Law), the presumption contained in the second sentence of New York Social Services Law § 131(11) (McKinney Supp. 1974). Fed. R. Civ. P. 62(c) The notice of motion does not state the length of the stay requested but presumably it is "during the pendency of the appeal". Fed. R. Civ. P. 62(c)

The notice of motion was returnable on December 19, 1974, when it was submitted (after oral argument) to a single judge and was taken under advisement.

At the time the motion was made, argued, and submitted, there was a stated intention by movant to appeal but no

appeal had in fact been taken. Under the wording of Rule 62(c), it would seem that the motion could not then have been granted because the authority for granting such a motion exists *after* an appeal has been taken. See *United States* v. *El-O-Pathic Pharmacy,* 192 F.2d 62, 79 (9th Cir. 1951)

It now appears that an appeal has been recently taken by movant Lavine, the notice of appeal having been filed with the Clerk of this Court on January 9, 1975.

Copies of the moving papers, of the opposing affidavit, of the Memorandum for Plaintiffs of points and authorities in opposition to motion for a stay (dated December 26, 1974), and of the letter (dated January 6, 1975) of counsel for movant Lavine, have been submitted to all the judges of this three judge Court.

The motion for a stay is granted.

SO ORDERED.

Dated: January 22, 1975

JAMES L. OAKES
James L. Oakes
United States Circuit Judge

DUDLEY B. BONSAL
Dudley B. Bonsal
United States District Judge

INZER B. WYATT
Inzer B. Wyatt
United States District Judge

APPENDIX D

Notice of Appeal.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397
IBW

RONALD MILNE, individual and on behalf of all other persons similarly situated,

Plaintiff,

—and—

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

—against—

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services and ABE LAVINE, individually and as Commissioner of Social Services,

Defendants,

—and—

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Appendix D.

SIRS:

PLEASE TAKE NOTICE that defendant Abe Lavine hereby appeals to the Supreme Court of the United States from the Judgment and Order of the three-judge district court dated the 13th day of December, 1974, and entered in the office of the Clerk of the United States District Court, Southern District of New York, on the same day which permanently enjoined defendants from enforcing the presumption contained in the second sentence of New York Social Services Law § 131(11) (McKinney Supp. 1974) and 18 NYCRR § 385.7 that persons who voluntarily terminated their employment within 75 days preceding their application for Home Relief or Aid To Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance; and which declared that same section of that statute violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and from an Order of the United States District Court, Southern District of New York dated the 13th day of Deecmber, 1974 and entered in the office of the Clerk of that Court on the same day which declared the action to be maintainable as a class action which class of plaintiffs consists of all persons residing in New York State who have or may apply for public assistance in the Home Relief or Aid to Needy Families with Dependent Children categories within 75 days after voluntarily terminating their employment and who have been, or may be disqualified from receiving such assistance for any period due to the enforcement of the presumption, that such persons terminated their employment for the purpose of qualifying for or receiving a greater amount of such assistance, contained in the second sentence of New York Social Services Law, § 131(11) (McKinney Supp. 1974), and in NYCRR § 385.7; and the said defendant here-

Appendix D.

by appeals from each and every part of said Judgment and Order as well as the whole thereof.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: New York, New York
January 10, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

.....

AMY JUVILER
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3443

To: THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
56 Grand Street
White Plains, New York 10601
Att: Gerald Norlander, Esq.

HON. GEORGE E. BOISVERT
Commissioner of Social Services
for Ontario County
Canandaigua, New York 14424
Att: Mr. Harrison Downe

Appendix D.

HON. HARRY LOTT
County Attorney
County Office Building
White Plains, N.Y. 10601
Att: Richard A. McAtamney Esq.

MONROE COUNTY LEGAL ASSISTANCE
CORP.
Flood Disaster Relief Project
126 Pine Street Room 303
Corning, New York 14830

Supreme Court, U. S.
FILED
AUG 18 1975
MICHAEL RODAK, JR., CLERK

APPENDIX.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Filed March 10, 1975
Probable Jurisdiction noted June 30, 1975

INDEX

	PAGE
Docket Entries	1
Order to Show Cause and Temporary Restraining Order on Behalf of Ronald Milne	8
Affidavit of Ronald Milne in Support of Show Cause Order	10
Certificate of Attorney Pursuant to Rule 65	14
Amended Complaint	15
Resignation Letter of Ronald Milne, Exhibit "A" to Amended Complaint	28
Notice of Denial of Public Assistance, Exhibit "B" to Amended Complaint	29
Notice of Fair Hearing, Exhibit "C" to Amended Complaint	30
Stipulation That Motion of Ronald Milne for a Temporary Restraining Order and the Convening of A Three-Judge Court Be Withdrawn Without Prejudice	33
Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee	35
Affidavit of Roy Levee in Support of Show Cause Order	38
Correspondence From Union, Exhibit "A" to Levee Affidavit	42
Landlord-Tenant Court Judgment, Exhibit "B" to Levee Affidavit	43
Notice of Ineligibility for Public Assistance for 75 Days, Exhibit "C" to Levee Affidavit	43

PAGE

Affidavit of John C. Gray, Attorney for Applicant for Intervention, Roy Levee in Support of Show Cause Order 45

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Douglas Streeter 49

Affidavit of Douglas Streeter in Support of Show Cause Order 52

Affidavit of Catherine Cronin, Attorney for Applicant for Intervention, Douglas Streeter in Support of Show Cause Order 55

Affidavit of Silas Gilliam 57

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee 60

Affidavit of Robert C. Lee in Support of Show Cause Order 63

Correspondence From Landlord, Exhibit "A" to Lee Affidavit 70

Letter From Former Employer, Exhibit "B" to Lee Affidavit 71

Notice of Denial of Public Assistance, Exhibit "C" to Lee Affidavit 72

Attorney's Certificate Pursuant to Rule 65 in Support of Show Cause Order 73

Proposed Intervenor's Complaint of Robert C. Lee 74

Exhibits "A" and "B" to Proposed Intervenor's Complaint Are Printed *Infra* as Exhibits to the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee 86

PAGE

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Shirley Miller 87

Affidavit of Shirley Miller in Support of Show Cause Order 89

Attorneys Certificate Pursuant to Rule 65 in Support of Show Cause Order 95

Medical Treatment, Exhibit "B" to Miller Affidavit 96

Statement From Hospital to Welfare Examiner, Exhibit "C" to Miller Affidavit 98

Second Statement From Hospital to Welfare Examiner, Exhibit "D" to Miller Affidavit 99

Order for Three-Judge Court, Wyatt, J. February 20, 1974 100

Order of January 25, 1974, Denial of Roy Levee's Motion for Intervention 104

Plaintiff's Request for Production of Documents by Defendant Berman 105

Plaintiff's First Interrogatories to Defendant Berman 110

Plaintiff's First Interrogatories to Defendant Lavine 116

Plaintiff's Request for Production of Documents by Defendant Lavine 120

Defendant's Notice of Motion for Protective Order .. 123

Affidavit of F. Sherwood Alexander in Support of Defendant's Motion for Protective Order 124

Plaintiff's Notice of Motion to Compel Discovery ... 127

Affidavit of Gerald A. Norlander in Support of Plaintiffs' Motion to Compel Discovery 128

Supplementary Affidavit of Gerald A. Norlander in Support of Motion to Compel Discovery 135

PAGE

Order Authorizing Discovery 137

Answer of Defendant Lavine 139

Answer of Defendant Berman 145

Order to Show Cause for Order Granting Intervention and Temorary Restraining Order on Behalf of Joe Nathan Beverly, Odell Beverly, and John Beverly 147

Affidavit of Joe Nathan Beverly in Support of Show Cause Order 150

Affidavit of Willie Beverly in Support of Show Cause Order 156

Affidavit of Odell Beverly and John Beverly in Support of Show Cause Order 161

Affidavit of Gerald A. Norlander in Support of Show Cause Order 167

Petition for Removal of Tenant, Justice Court, Town of Middlesex, Exhibit "A" to Beverly Affidavit Omitted in Printing 168

Affidavit of Doug Berky in Support of Show Cause Order 169

Request for an Expedited Fair Hearing, Exhibit "A" to Berky Affidavit 172

Written Notice of Denial of Application for Public Assistance, Exhibit "B" to Berky Affidavit 173

Notice of Fair Hearing, Exhibit "C" to Berky Affidavit 175

Notice of Fair Hearing, Exhibit "D" to Berky Affidavit 178

Proposed Intervenor's Complaint of Joe Nathan Beverly, Willie Beverly and John Beverly 181

PAGE

Order Granting Motions of Lee and Streeter to Intervene 200

Intervenor Streeter's Complaint 201

Order Granting Motions of Willie Beverly, Odell Beverly, and John Beverly to Intervene 214

Notice of Motion to Intervene on Behalf of Anthony Brownlee and Ethel Reid 216

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Ulysses Westbrook 218

Attorney's Certificate Pursuant to Rule 65 220

Letter from Steven L. Brown to Carl L. Feinstock 221

Affidavit of Steven L. Brown, Attorney for Applicant for Intervention, Ulysses Westbrook 226

Proposed Intervenor's Complaint of Ulysses Westbrook 227

Notice of Denial of Assistance for 75 Days, Exhibit "A" to Proposed Intervenor's Complaint 242

Plaintiff's Notice of Motion for Order Determining Class Action and Summary Judgment 244

Plaintiff's Statement Pursuant to Rule 9-G 247

Affidavit of Ronald Milne in Support of Motions for Class Action and Summary Judgment 264

Letter of Resignation, Exhibit "A" and Notice of Denial of Public Assistance, Exhibit "B" to Affidavit of Ronald Milne is printed *infra* as Exhibits "A" and "B" to Amended Complaint 269

Notice from Decision of Fair Hearing, Exhibit "C" to Affidavit of Ronald Milne 270

PAGE

Affidavit of Hilary Sohmer in Support of Motions for Class Action and Summary Judgment 272

Affidavit of Douglas Streeter in Support of Motions for Class Action and Summary Judgment 276

Notice of Denial of Public Assistance, Exhibit "A" to Affidavit of Douglas Streeter 282

Affidavit of Robert C. Lee in Support of Motion is Printed *infra* With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee 283

Affidavits of Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly, and Doug Berky in Support of Motion Are Printed *infra* With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Joe Nathan Beverly, Odell Beverly, and John Beverly 283

Supplemental Affidavit of Doug Berky in Support of Motion 283

Affidavit of Ethel Reid in Support of a Class Action Determination and Summary Judgment 286

Letter to Reid Affidavit from Westchester Department of Social Services to Ethel Reid; Exhibit "A" 290

Notice of Denial of Public Assistance, Exhibit "B" to Reid Affidavit 291

Letter of Transmittal of the Fair Hearing Decision, Exhibit "C" to Reid Affidavit 292

Decision After Fair Hearing, Exhibit "D" to Reid Affidavit 294

PAGE.

Affidavit of Edmund J. Byrnes, in Support of Motions for Class Action and Summary Judgment 296

Decision of Referee of the New York State Department of Labor, Exhibit "A" to Byrnes Affidavit 299

Notice of Denial of Application of Unemployment Insurance Benefits, Exhibit "B" to Byrnes Affidavit 302

Notice of Denial of Public Assistance, Exhibit "C" to Byrnes Affidavit 304

Request for a Fair Hearing, Exhibit "D" to Byrnes Affidavit 305

Decision After Fair Hearing, Exhibit "E" to Byrnes Affidavit 306

Affidavit of Roy Levee, in Support of Motion is Printed *Infra,* With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee 307

Affidavit of John C. Gray, in Support of Motions for Class Action and Summary Judgment 308

Affidavit of Allen Phillips, in Support of Motions for Class Action and Summary Judgment 310

Notice of Denial of Public Assistance, Exhibit "A" to Phillips Affidavit 312

Affidavit of Pat Scarfone, in Support of Motions for Class Action and Summary Judgment 313

Notice of Denial of Public Assistance, Exhibit "A" to Scarfone Affidavit 316

Fair Hearing Decision, Exhibit "B" to Scarfone Affidavit 317

PAGE

Affidavit of Gerald A. Norlander, in Support of Motions for Class Action and Summary Judgment 322

Supplemental Affidavit of Gerald A. Norlander, in Support of Motions for Class Action and Summary Judgment 324

Excerpts from *Work in America,* Report of a Special Task Force to the Secretary of Health, Education, and Welfare, Plaintiff's Exhibit "A" 327

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B" 340

New York City Human Resources Administration, 1972 Annual Report, Page 11, Plaintiff's Exhibit "C" 373

Testimony of Mr. Barry Van Lare in *Problems in Administration of Public Welfare Programs,* Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D" 376

Excerpts from Bowen, W.G. and Finegan, T.A., *The Economics of Labor Force Participation,* Plaintiff's Exhibit "E" 383

Excerpts From Irelan, L. M., Ed., *Low Income Life Styles,* U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F" 393

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G" 408

PAGE

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H" 422

Excerpts From Leonard Goodwin, *Do the Poor Want to Work? A Social-Psychological Study of Work Orientations,* Plaintiff's Exhibit "I" 434

Defendant Berman's Answers to the Interrogatories 439

Defendant Lavine's Notice of Motion for Judgment on the Pleadings or for Summary Judgment .. 441

Affidavit of Edward W. Maher, in Support of Motion 443

Informational Letter to All Commissioners, Exhibit "A" to Maher Affidavit 454

Excerpt From Directive 1M No. 14/72 Issued by the Human Resources Administration on January 27, 1972, Exhibit "B" to Maher Affidavit 456

Decision After Fair Hearing in the Matter of the Appeal of Douglas Streeter, Exhibit "C" to Maher Affidavit 459

Decision After Fair Hearing, in the Matter of the Appeal of Joseph Beverly, Exhibit "D" to Maher Affidavit 461

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit 463

Answer of Defendant Abe Lavine to Plaintiff's Interrogatories and Request for Production of Documents 479

Defendant Lavine's Statement Pursuant to Rule 9(g) 503

PAGE

Answer of Defendant Lavine to Robert C. Lee's Complaint 507

Answer of Defendant Lavine to Intervenors Beverlys' Complaint 514

Answer of Defendant Lavine to D. Streeter's Complaint 522

Hearing Before the Three-Judge Court, May 10, 1974 530

Opinion of the Three-Judge District Court Granting Declaratory and Injunctive Relief 563

Class Action Order 579

Final Judgment and Order of the Three-Judge District Court 581

Order to Show Cause for an Order of Contempt and Further Relief 584

Affidavit of Terry Yant, in Support of Motion for Contempt 587

Notice of Denial of Assistance, Exhibit "A" to Yant Affidavit 590

Second Notice of Denial of Assistance, Exhibit "B" to Yant Affidavit 591

Affidavit of Gladys Hart, in Support of Motion for Contempt 592

Notice of Denial of Assistance, Exhibit "A" to Hart Affidavit 595

Affidavit of John J. Kelly, in Support of Motion for Contempt 596

Affidavit of Service 599

Affidavit of Gerald A. Norlander, in Support of Motion for Contempt 600

PAGE

Affidavit of John H. Battistoni, in Opposition to Motion for Contempt 605

Defendant's Notice of Motion for an Order of a Partial Stay 609

Affidavit of Amy Juviler, in Opposition to Contempt and in Support of Motion for a Partial Stay .. 611

Affidavit of Henry Gruffi, in Support of Motion for a Partial Stay 615

Memorandum to Executive Staff of Department of Social Services, Exhibit "A" to Gruffi Affidavit .. 619

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit 620

Telegram to Local Commissioners of Social Services, Exhibit "C" to Gruffi Affidavit 630

Administrative Letter to Local Commissioners, Exhibit "D" to Gruffi Affidavit 631

Affidavit of Barbara Mankes, in Support of Motion for Contempt 633

Discontinuance Letter, Exhibit "A" to Mankes Affidavit 636

Affidavit of Lowell Swanson, in Support of Motion for Contempt 638

Letter of Denial of Assistance, Exhibit "A" to Swanson Affidavit 641

Supplemental Affidavit of Gerald A. Norlander, in Support of Motion for Contempt 642

Letter From Tompkins County Department of Social Services to Nancy Bereano, Exhibit "A" to Norlander Supplemental Affidavit 646

PAGE

Letter From Stephen Lacher to Gerald A. Norlander, Exhibit "B" to Norlander Supplemental Affidavit 647

Affidavit of John Hepler, in Support of Motion for Contempt 648

Affidavit of James Maine, in Support of Motion for Contempt 651

Affidavit of Sherry Murphy, in Support of Motion for Contempt 654

Affidavit of Gerald A. Norlander, in Opposition to Stay 657

Hearing Before District Judge, December 19, 1974 .. 661

Memorandum Opinion and Order of the Three-Judge District Court Granting a Partial Stay of its Order Pending Appeal 699

Notice of Appeal 701

Docket Entries.

(United States District Court, Southern District of New York, 73 Civ. 5397)

DATE	PROCEEDINGS
Dec. 19–73	Filed complaint and issued summons.
Dec. 19–73	Filed affdvt & order for service by an individual—Clerk.
Jan. 14.74	Filed Pltffs. Memorandum of points & authorities in support of order to Show Cause & Temporary restraining Order.
Jan. 4.74	Filed Order to Show Cause & Temporary Restraining Order. Ret. 1/10/74. Carter J.
Jan 11.74	Filed Memo. End. on Order to Show Cause dated 1/4/74. Being advised by letter dated 1/9/74 that this motion is being withdrawn without prejudice leave is granted so to withdraw. Wyatt J.
Jan 8.74	Filed Amended Complaint.
Jan 8.74	Filed Summons and affidavit of Service by Gerald A. Norlander on 12/19/73.
Jan 11.74	Filed Affidavit of Service by Mail of Amended Complaint with Exhibits Annexed thereto.
Jan 11.74	Filed Exhibits to Amended Complaint.
Jan 16.74	Filed Stip & Order that defts. time to answer be extended until 2/8/74; & the time for pltffs. to move pursuant to rule 11A(c) until 60 days after Service of defts. answer, etc. Wyatt J
Jan 23.74	Filed Affidavit by John C. Gray atty for applicant for intervention Roy Levee.
Jan 23.74	Filed Order to Show Cause & Temporary Restraining Order. Ordered that Jules Sugarman & Abel Lavine, etc. are restrained from denying public assistance to the proposed intervenor pltff. Roy Levee, etc. Wyatt J. Ret. 1/25/74.

DATE	PROCEEDINGS
Jan. 25–74	Filed pltff-intervenor memorandum in support of motion to intervene.
Jan. 28–74	Filed memo endorsed on motion filed 1-23-74 —Application denied—Wyatt, J. mailed notices.
Jan. 25–74	Filed pltff's 1st interrogs. to deft. Berman.
Jan. 25–74	Filed pltff's request for production of documents by deft. Lavine
Jan. 25-74	Filed pltff's request for production of documents by deft. Berman.
Jan. 25–74	Filed pltff's 1st interrogs. to deft. Lavin
Jan. 25–74	Filed pltff's notice of depositions
Jan. 29–74	Filed pltff's affdvt & Order to Show Cause and Temporary Restraining Order. The posting of security by intervenor-pltff be waived. This Order to Show Cause, together with the papers upon which it is granted be personally served upon the attys for each of the parties named herein, on or before the 28th day of January, 1974 by 5 P.M.—Wyatt, J.—Ret. 2-1-74 Rm. 705.
Feb. 4.74	Filed Order to Show Cause & Temp. Restraining Order. Ordered Motion ret. 2/15/74 Etc. & defts. are restrained from imposing sanctions upon Robert C. Lee under color of Sec. 131(10) of the N.Y. Social Services Law, etc. & Defts. Leonard Berman & Abe Lavine, their subordinates, agents, etc are restrained as indicated pending the final hearing & determination of his motion for a preliminary injunction, & security requirements of rule 65 FRCP be waived, etc. Wyatt J.
Feb 15.74	Filed Proposed intervenor's complaint.

DATE	PROCEEDINGS
Feb. 20–74	Filed Memorandum Order—It is determined that a 3 Judge Court is required & that the Chief Judge of the Circuit should be notified—So Ordered—Wyatt, J. Mailed notices.
Feb. 26–74	Filed memorandum of law in support of motion for intervention & preliminary injunction.
Feb 26.74	Filed Designation of Judges by the Chief Judge USCA. Ordered that Judge James L. Oakes, CJ, & Dudley B. Bonsal, DJ. with the Hon. Inzer B. Wyatt to hear & determine as indicated. Kaufman CH. J. of USCA (mailed notice)
Mar 1.74	Filed Pltffs. Memorandum of Points & Authorities in support of pltffs. motion to compel discovery & in opposition to defts. motion for an order of protection.
Mar 1.74	Filed Pltffs. Notice of Motion. Re: Compel Discovery. ret. 3/8/74.
Mar. 4.74	Filed deft's (L. Berman) affdvt & notice of motion for protective order—Ret. 3-8-74.
Mar 8.74	Filed Memo. End. on motion of deft. L. Berman dated 3/4/74. Motion is denied as moot. Wyatt J. (mailed notice)
Mar 8.74	Filed Answer. (Abe Levine)
Mar 8.74	Filed Answer to Amended Complaint by Leonard Berman.
Mar 8.74	Filed Memo. End. on motion dated 3/1/74. Request for production of documents by deft. Lavine: a response will be made to item 1; no response need be made to items 2, 3, or 4; As to the 1st interrogs to deft. Berman: interrogs 1 & 2 will be answered; other interrogs. need not be an-

DATE	PROCEEDINGS
	swered; As to 1st interrogs. to deft. Lavine: interrogs 1 & 5 will be answered: the other interrogs. need not be answered. depositions will not be taken; etc. The discovery authorized hereunder will be completed on or prior to 4/12/74. Wyatt J. (mailed notice).
Mar 22.74	Filed Proposed Intervenor's Complaint.
Mar 22.74	Filed Affidavit of Personal service by Wallace E. Barnes.
Mar 22.74	Filed Order to Show Cause & Temp. Restraining Order. Ret. 3/22/74.
Mar 27.74	Filed Order that Robert C. Lee is granted leave to intervene, etc. & his complaint filed 2/15/74 is deemed to be his complaint in this cause; & Douglas Streeter is granted to leave to intervene as a party pltff. & may file a complaint, etc. Wyatt J. (mailed notice).
Mar 25.74	Filed Memo. End. on motion dated 3/22/74. Motion granted on Consent. Settle Order on Notice (mailed notice).
Apr 9.74	Filed Intervenor Complaint.
Apr 19.74	Filed Order to Show Cause. Re: Temporary Restraining Order. ret. 4/19/74. Pursuant to rule 65 of FRCP, for a preliminary injunction enjoining deft. Lavine & proposed intervention deft. Reed their agents & successors from as indicated. Wyatt J.
Apr 24.74	Filed Memo. End. on Order to Show Cause dated 4/19/74. The motion to intervene is denied as moot. Wyatt J. (mailed notice).
Apr 26.74	Filed Pltffs. Notice of Motion. Re: Intervene. ret. 5/10/74.

DATE	PROCEEDINGS
Apr 26.74	Filed Pltffs. Memorandum of Points & Authorities in support of motions for class action determination & summary judgment.
Apr 26.74	Filed Pltffs. Notice of Motion. Re: Class Action & Summary Judgment.
Apr 30.74	Filed Respondents Notice of Motion. Re: Judgment. ret. 5/10/74.
Apr 30.74	Filed Deft. Lavine's Memorandum of Law.
Apr 30.74	Filed Answer of Deft. Abe Lavine to pltffs. Interrogs & Request for production of documents by deft. Lavine.
May 2.74	Filed Affidavit of service by mail by Nancy Valenti.
Apr 10.74	Filed Order. Ordered the Willie Beverly, Odell Beverly & John Beverly by their mother, etc. Roberta Beverly & Joe Nathan Beverly, are granted leave to intervene in this action as parties pltffs. Etc. Wyatt J. (mailed notice).
May 10.74	Filed Deft. Lavine Statement pursuant to rule 9(g).
May 10.74	Filed Answer. (Lavine) to Robert C. Lee's Complaint.
May 10.74	Filed Answer (Lavine) (to Intervenors Beverly.
May 10.74	Filed Answer (Lavine) to Douglas Streeter complaint.
May 10.74	3 Judge Court before James L. Oakes, C.J.—Dudley B. Bonsal, D.J. Inzer B. Wyatt D.J. Hearing Held, Pursuant to 28 USC Sec 2281, 2284, Decision reserved.
Sept 4, 74	Filed transcript of record of proceedings, dated May 10, 1974.

DATE	PROCEEDINGS
Nov 11.74	Filed Opinion #41424. Ordered In view of our decision on the motion by pltffs. this motion by deft. Lavine must be & is denied. Settle an order or orders. Oakes, CJ, Bonsal D.J. Wyatt J. D.J. (mailed notice).
Dec 13.74	Filed Order that this action is maintainable as a class action pursuant to Rule 23 FRCP, etc. Wyatt J. (mailed notice).
Dec 13.74	Filed Final Judgment & Order that deft. Lavine's motion to dismiss the action or in the alternative for summary judgment is hereby denied; Pltffs. motion for summary judgment is granted to the extent that defts. their offices, agents, etc. are permanently enjoined from enforcing, against the named pltff, the pltff-intervenors & all members of the pltff. class, as indicated; pltffs. are entitled to & granted to a declaratory judgment, etc. Oakes, CJ, Bonsal D.J. Wyatt D.J. Judgment Ent. 12-13-74 Clerk, Ent. 12/13/74(M/N).
Dec 19.74	Filed Order to Show Cause for an order of Contempt & further relief to Terry Yant, Gladys Hart, etc. ret. 12/19/74
Dec 19.74	Filed Pltffs. Memorandum of points & authorities in support of motion.
Dec 19.74	Filed Deft. Lavine Notice of Motion & supporting affidavit for an order staying so much of the execution of the order of this court dtd. 12/13/74, etc. ret. 12/19/74.
Dec 19.74	Filed Pltffs. Supplemental Memorandum of points & authorities in support of Contempt motion.
Dec 19.74	Filed Affidavit by John H. Battistoni Deputy Commissioner of Social Services for the County of Dutchess.

DATE	PROCEEDINGS
Dec. 19.74	Filed Notice of appearance by members of the pltff. Class pursuant to rule 23 John Helper & Sherry Murphy hereby appear as members of the pltff. class as attys for said class members.
Dec 19.74	Filed Affidavit in support of motion for contempt by Barbara Mankes.
Dec 19.74	Filed Affidavit in support of motion for contempt by Lowell Swanson.
Dec 19.74	Filed Deft. Lavine's Memorandum of Law in opposition to the order for contempt & equitable relief & in support of a motion for a partial stay.
Dec 19.74	Filed Affidavit in opposition to Stay by Gerald A. Norlander.
Dec. 20.74	Filed Memo. End. on motion dtd. 12/19/74. Motion granted to the extent that Deft. Lavine will cause to be sent a letter on or before 1/6/75, to all those members of the Class denied home relief assistance since 11/12/74, advising such members that they may reapply for such assistance retroactive to 11/12/74 & are free to ask for legal advice as they may see it; otherwise motion denied. So Ordered Wyatt J. (mailed notice)
Dec 30.74	Filed Pltffs. Memorandum of points & authorities in opposition to motion for Stay.
Jan 10.75	Filed Notice of Appeal to the Supreme Court of the United States.
Jan 22.75	Filed Memorandum Order. Motion for a stay is granted. So Ordered Oakes CJ, Bonsal D.J., Wyatt D.J.

Order to Show Cause and Temporary Restraining Order.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ 5397

RICHARD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services; and

ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants.

Upon the Complaint and Affidavit of Ronald Milne and the certificate of Michael J. Dale, Esq., of Counsel to The Legal Aid Society of Westchester County, attorney for plaintiff attached hereto, it is

ORDERED, that the defendants show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 10, on the 9th day of January, 1974 at 10 A.M. or as soon thereafter as counsel can be heard why an order should not be made herein, plaintiff is entitled to emergency public assistance under Section 131(10) of the New

Order to Show Cause and Temporary Restraining Order.

York Social Services Law and 18 NYCRR § 385.7 pending an expedited hearing and determination pursuant to 28 U.S.C. § 2281 and 2284 as to the constitutionality of Section 131(10) of New York Social Services Law and 18 NYCRR § 385.7.

ORDERED, that this order to show cause, together with the papers upon which it is granted, be served upon the defendants personally on or before the 2nd day of January, 1974 by 11:30 A.M.

Dated: New York, New York
January 2, 1974

ISSUED AT 11:15 A.M.

/s/ ROBERT L. CARTER
United States District Judge

Affidavit of Ronald Milne in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

RONALD MILNE, being duly sworn, deposes and says:

1. I am the plaintiff in the above entitled action and I make this affidavit in support of the annexed motion for an order enjoining and prohibiting defendants from enforcing provisions of *N. Y. Soc. Serv. Law* §131 (10) (McKinney 1973 Supp.) and 18 *N.Y.C.R.R.* § 385.7 against myself and all others similarly situated.

2. I am an adult citizen of the United States and of the State of New York, and I live at 157 Saratoga Avenue, Yonkers, Westchester County, New York.

3. I was employed for two years prior to November 2, 1973, as security guard at Columbia University, New York, New York 10027. Prior to that job, I had worked regularly on three different jobs for seventeen years, including 12 years at Phelp's Dodge and 4 years at the New York State Armory in Yonkers.

4. On November 2, 1973, I was told by my supervisor that I was discharged. I wanted to keep my job, and I appealed the decision to fire me through the grievance procedures of my union, T.W.U., Local #241.

5. A grievance hearing was held on November 5, 1973; the decision of my employer was affirmed. I appealed, and a second hearing was held on November 12, 1973. At the second hearing, a compromise proposal was offered to me. I was told that if I would submit a letter of resignation, my record would be cleared of any references to allegations of misconduct or attempts to fire me; otherwise I would face discharge. I accepted this proposal because I thought it would make it easier for me to find a new job. I also wanted to avoid the stigma associated with being fired. I wrote a letter of resignation, dated it November 9, 1973, and mailed it by registered mail to Columbia University.

6. Since losing my job, I have been trying continuously without success, to find new employment.

7. Since losing my job on November 2, 1973, I hape become completely destitute. I have no savings, current income or resources. My claim for unemployment insurance benefits has been denied. I have appealed the denial of those benefits, have had a hearing on December 22, 1973, at which the issue of misconduct was raised but have not received any decision.

8. On November 12, 1973, I went to the office of the Westchester County Department of Social Services at 70 Ashburton Avenue, Yonkers, New York, to apply for public assistance. I expected that the Department of Social Services would help me because I was, and still am, destitute. I was told by a Mr. Ackerman that my application for assistance must be denied pursuant to a state law which disqualifies persons from receiving assistance who had quit a job in the preceding 75 days. I was given a written statement that read in part: "Your application for public assistance has been denied for the following

reasons: As per your application, you resigned from your job at Columbia University on 11/2/73. A 75-day sanction is in effect from 11/2/73 to 1/15/74, before you would be eligible for a Public Assistance Grant."

9. My counsel attempted to persuade Mr. Ackerman and a Mr. Rosenthal, employees of the Yonkers office of the Westchester County Department of Social Services, to provide me with emergency grant of assistance, but the requests were denied.

10. Mr. Joseph Schmitt, Esq., Deputy Commissioner for Legal Affairs of the Westchester County Department of Social Services was informed by my counsel on December 5, 1973, of my situation, and he stated that no assistance could be given to me until 75 days after I had lost my job, regardless of my need.

11. I remain completely destitute. I owe two month's rent of $150.00 to my landlord and will owe an additional $75.00 on January 1, 1974. I have been the superintendent in my building for the past nine years receiving a forty percent rent reduction for my services. My Landlord will evict me if I cannot pay the rent.

12. I have received third notices from Consolidated Edison Company and New York Telephone Company. I owe the telephone company $22.38, and the electric company $21.13. I fear that I will receive cut-off notices from both very soon.

13. I have no money with which to buy food and have borrowed over $200.00 from friends. I have had to depend on the charity of others for just one meal a day. Except in bad weather my brother-in-law, an apartment complex

superintendent has been driving me the 10 miles from Yonkers to his family's apartment in Hartsdale, New York, for evening meals.

14. The defendants have caused great injury and suffering to me by their decision. My counsel requested an expedited hearing, but I have received no notice and no hearing has been held.

15. As a result of defendants' action I have been hungry, embarrassed and subjected to the stigma of not being able to pay bills and participate in normal activities. I believe that if I could have a meaningful hearing before an impartial decision maker, I could prove that I did not "voluntarily" quit my job for the "purpose" of obtaining welfare assistance. The presumption that I quit my job to obtain welfare, and the denial of a prompt hearing to review the defendants' action is causing me grave and irreparable harm in violation of my rights under the United States Constitution.

WHEREFORE, I respectfully pray that this Court grants my motion for injunctive relief as set forth herein and for such other and further relief as to this Court may seem just, proper, and equitable.

(Sworn to by Ronald Milne, December 28, 1973.)

Certificate of Attorney Pursuant to Rule 65.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

I, MICHAEL J. DALE, one of the attorneys for the plaintiffs herein certifies that on December 27, 1973, Hilary Sohmer, an attorney assigned to the Yonkers branch office of The Legal Aid Society of Westchester County and of Counsel in this proceeding, contacted the offices of Louis F. Lefkowitz, Esq., Attorney General for the State of New York, and on December 28, 1973, the offices of Harry Lott, Esq., County Attorney for the County of Westchester, New York, attorneys for the defendants herein and advised them that an application for a temporary restraining order in the within action would be made to Hon. Robert L. Carter in Room 506 of the United States District Courthouse, Foley Square, New York, New York at 11 o'clock a.m., on January 2, 1974.

Dated: Yonkers, New York
December 28, 1973,

MICHAEL J. DALE

(Because the Amended Complaint Was Filed on January 8, 1974, the Original Complaint, Summons, and Affidavit of Service Have Been Omitted in Printing.)

Amended Complaint.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

I. INTRODUCTION

1. This is an action authorized by 42 U.S.C. § 1983, brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, arising from the defendants' enforcement and application of a New York welfare statute, New York Social Services Law § 131(10) (McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 *N.Y.C.R.R.* § 385.7, in violation of rights secured to the plaintiffs by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Declaratory relief, injunctive relief and damages are sought.

2. The plaintiff, who is indigent and needy, has been disqualified from receiving any public assistance by defendants and their agents for a period of seventy-five days, because defendants invoked a presumption established by the statute and regulation challenged herein that plaintiff's employment was terminated for the purpose of qualifying for public assistance eligibility. Defendants denied plaintiff's request for a prompt hearing that would provide an opportunity for him to rebut the presumption.

II. JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3) which provides for original jurisdiction of this

Court in suits arising under color of state law to redress the rights, privileges and immunities secured by the United States Constitution. Plaintiff's request for injunctive relief, retroactive benefits and damages is authorized by 42 U.S.C. § 1983. Plaintiff's request for a declaratory judgment is authorized by 28 U.S.C. §§ 2201 and 2202.

III. Three-Judge Court

4. This is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284, since plaintiff seeks to restrain and enjoin the enforcement, operation and execution of New York Social Services Law § 131(10) (McKinney Supp. 1973) and 18 *N.Y.C.R.R.* § 385.7, both of which are of statewide applicability, on the grounds that this state statute and regulation are contrary to the United States Constitution.

IV. Plaintiff

5. Plaintiff Ronald Milne is an adult citizen of the United States and of the State of New York. Plaintiff resides at 157 Saratoga Avenue, in the City of Yonkers, County of Westchester, New York.

V. Class Action Allegations

6. Plaintiff is a member of a class of needy persons residing in New York State who have been or may be disqualified from receiving public assistance for a period of seventy-five days after the termination of their employment or reduction in earnings due to the enforcement and application by defendants of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7.

7. Plaintiff is also a member of a class of needy persons residing in New York State who have been, are, or may be disqualified by defendants from receiving any public assistance because of the enforcement of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and who have been, are, or may be denied the opportunity for a prompt hearing to rebut the defendants' presumption that their employment was terminated or earnings reduced for the purpose of qualifying for public assistance.

8. The named plaintiff brings this action on his own behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The classes described in Paragraph Six and Seven, above, are so numerous that joinder of all their members in this action would be impractical. The defendants or their agents and employees are believed to have knowledge of the number of persons disqualified for public assistance under the statute and regulation challenged herein, and thus they are believed to have knowledge of the exact or approximate size of the classes described in Paragraph Six and Seven, which are believed to consist of several thousand persons. There are questions of law and fact common to the classes, namely, the constitutional validity of New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 and the constitutionality of denying plaintiffs a prompt hearing that would afford them an opportunity to rebut the statutory presumption. The claims of the representative party are typical of the claims of the classes. The Legal Aid Society of Westchester County, attorney for plaintiffs, will fairly and adequately protect the interests of the classes. The defendants have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

VI. Defendants

9. Defendant Leonard Berman is sued individually and in his official capacity as Commissioner of the Westchester County Department of Social Services. He is responsible for the administration of New York State's public assistance programs in the County of Westchester, New York. His offices are at Room 432 of the Westchester County Office Building, White Plains, Westchester County, New York.

10. Defendant Abe Lavine is sued individually and in his official capacity as Commissioner of the New York State Department of Social Services. He is responsible for the administration of New York State's public assistance programs throughout New York State. He has an office at 2 World Trade Center, New York City, New York County, New York.

VII. Factual Allegations

11. On or about November 2, 1973, Plaintiff Ronald Milne (hereinafter referred to as "Milne") was suspended from his employment as a security guard at Columbia University, New York, N.Y. for alleged misconduct. Prior to his suspension, Milne had been regularly employed for seventeen years. Milne contested his employer's decision through two levels of his union's grievance procedures. On or about November 12, 1973, and in the course of a grievance proceeding, Milne was offered by his employer the choice of either resigning with a record clear of any reference to alleged misconduct, or of being discharged with a record of alleged misconduct. Milne's union representative advised him to resign with a clear record, in order

to improve his prospects for future employment. Milne thereafter submitted to his employer a resignation letter, pre-dated for November 9, 1973. A copy of Milne's resignation letter is annexed hereto as Exhibit "A".

12. On or about November 16, 1973, Milne applied for public assistance at an office of the Westchester County Department of Social Services in Yonkers, New York. At the time of his application, Milne had exhausted his savings, he was, and still is, destitute and in need of public assistance to provide for the necessities of life, and he reasonably expected that the defendants, their agents and employees would promptly grant him aid, care and support in accordance with Article XVII, Section 1 of the New York State Constitution and the New York Social Services Law, in order to prevent him from going hungry, suffering great hardship and other serious injury and damage.

13. On November 16, 1973, Milne was denied all public assistance by persons employed by and acting under the direction of the defendants. Milne was given a notice, dated November 16, 1973, which states, in pertinent part:

> Your application for public assistance has been denied for the following reasons:
>
> As per your application, you resigned from your job at Columbia University on 11/2/73. A 75 day sanction is in effect from 11/2/73-1/15/74 before you would be eligible for a Public Assistance grant.
>
> If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-5660, or by writing to the State Department of Social

Services, 1450 Western Avenue, New York (sic), New York 12203.

Sincerely,

S/H Ackerman
Name
Certification Examiner
Title

A copy of this notice is annexed hereto as Exhibit "B".

14. Upon information and belief, based upon statements made to Milne's counsel by Mr. Stuart Rosenthal, Senior Supervisor of Casework, Yonkers District Office, and Mr. Joseph R. Schmitt, Esq., Deputy Commissioner for Legal Affairs, of the Westchester County Department of Social Services, Milne was disqualified from receiving any public assistance for a period of seventy-five days in accordance with the directives of the defendants, pursuant to New York Social Services Law § 131(10) (McKinney Supp. 1973) and 18 *N.Y.C.R.R.* § 385.7.

15. Section 131(10) of the New York Social Services Law provides as follows:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

16. Part 385 of Title 18 of the New York Code of Rules and Regulations, a regulation authorized, promulgated and enforced by defedant Lavine, provides, in pertinent part, as follows:

> "385.7 Sanctions
>
> (a) • • •
>
> (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

This regulation is enforced throughout New York State by defendant Lavine. Defendant Berman enforces the regulation in Westchester County, New York, in accordance with the directives of defendant Lavine.

17. Defendant Lavine has established a "Fair Hearing" system, as set forth in Part 358 of Title 18 of the New York Code of Rules and Regulations, and his agents and employees regularly hold hearings in Westchester County to determine whether Defendant Berman and his agents and employees have denied assistance to public assistance applicants and recipients in accordance with state law. Defendant Lavine renders decisions after "Fair Hearings" are held. These decisions, when favorable to the applicant or recipient, are binding upon Defendant Berman.

18. On December 13, 1973, plaintiff Milne's counsel requested in a telephone call to an employee in the "Fair Hearing Section", Office of Counsel, Department of Social Services, Albany, New York, that Milne be provided an opportunity for an expedited "Fair Hearing". Milne's counsel was informed by this employee that no procedure exists for expedited hearings.

19. On January 2, 1974, twenty days after the request for a hearing had been made, and after commencement of this action, Milne was notified that a "Fair Hearing" had been scheduled for January 9, 1974, twenty-seven days after his request for a hearing. The "Fair Hearing" that was scheduled and the notice of hearing sent in accordance with directives of defendant Lavine effectively deprived plaintiff Milne of the opportunity for any relief before expiration of the seventy-five days during which he was disqualified for public assistance. Had Milne been afforded a prompt hearing, he would have claimed that he did not voluntarily leave his employment for the purpose of receiving public assistance. Upon information and belief, more than 30 days elapse before decisions after Fair Hearings reviewing denials of Home Relief applications

are rendered and implemented by defendant Lavine. A copy of Milne's "Notice of Fair Hearing" is annexed hereto as Exhibit "C".

20. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in a manner that created a conclusive presumption that plaintiff Milne's employment was terminated in order that plaintiff would be eligible for public assistance, and without affording Milne an opportunity to rebut this presumption within the seventy-five day statutory period.

21. Upon information and belief, defendant Berman has maliciously and in bad faith and with the intent to discourage needy persons from obtaining the public assistance they are legally entitled to, approved, tolerated and fostered the promulgation of memoranda, procedural guidelines, or other policy statements which direct employees of the Westchester County Department of Social Services to automatically deny public assistance to all needy applicants who apply within seventy-five days after the termination of their employment or reduction in earnings, without regard to evidence supplied by applicants which rebuts the presumption that their employment was terminated or earnings reduced for the purpose of obtaining public assistance, and with the knowledge that it is futile for such applicants to obtain timely relief from the denial of assistance through defendant Lavine's "Fair Hearing" procedures. These memoranda, policy statements, procedural guidelines and policy guidelines are believed to be signed and promulgated secretly and in bad faith violation of Part 300 of Title 18 of the New York Code of Rules and Regulations, which requires that such materials be published, approved by defendant Lavine, and available to plaintiff and interested persons.

22. Upon information and belief, defendant Lavine has, by his decisions after "Fair Hearings" in bad faith approved, encouraged, tolerated and fostered the application by defendant Berman of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7 as a conclusive presumption that disqualified plaintiff from receiving public assistance for seventy-five days.

23. Plaintiff Milne has suffered hunger, humiliation and stigma resulting from his destitution, great hardship, injury and damage in the amount of $2,000 as a direct result of the operation and enforcement of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and as a direct result of the malicious and bad faith application of this statute and regulation by defendants.

VII. Legal Claims

24. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations, on their face and as applied to Plaintiff Milne violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because they establish a presumption of the motivation and need of applicants for public assistance that is arbitrary, irrational, factually insupportable, and unrelated to the purposes of New York's public assistance program, and because they are impermissible, vague and overbroad in failing to define conduct that constitutes a voluntary termination of employment.

25. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they disqualify needy persons for public assistance without an opportunity for a prompt hearing which would afford them an opportunity to rebut the statutory presumption. Alternatively, the challenged statute and regulation as applied by defendants violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and Section 133 of the New York Social Services Law, because defendants do not accord persons affected by the challenged statute and regulation emergency assistance pending an opportunity for a hearing.

26. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 so as to conclusively presume that plaintiff Milne's employment was terminated for the purpose of qualifying for public assistance eligibility, without affording plaintiff an opportunity to rebut the presumption within the seventy-five day statutory period in violation of Plaintiff Milne's rights guaranteed by the Fourteenth Amendment to the United States Constitution.

Wherefore, Plaintiff respectfully prays on his own behalf and on behalf of all persons similarly situated, that this Court:

(A) Assume jurisdiction of this cause pursuant to 28 U.S.C. § 1343(3);

(B) Convene a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 to determine this controversy;

(C) Determine by order that this action be maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(D) Enter a final judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations on their face and as applied are contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

(E) Enter a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their agents, employees, successors and all others acting in concert with them from enforcing or applying the above statute and regulation without providing plaintiffs with prompt hearings and/or temporary or emergency assistance to plaintiffs pending a hearing;

(F) Enter a permanent injunction enjoining defendants, their agents, employees, successors and all others in concert with them from enforcing New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in such a manner as to conclusively presume that an applicant for public assistance had his employment terminated for the purpose of qualifying for public assistance.

(G) Enter a judgment awarding plaintiff and all others similarly situated public assistance grants retroactive to the date of their applications for assistance;

(H) Enter a judgment in favor of plaintiff against defendants Berman and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. § 1983 and Rule 54 of the Federal

Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of two thousand dollars ($2,000) and punitive damages of two thousand five hundred dollars ($2,500);

(I) Award plaintiffs their costs, disbursements and fees herein;

(J) Grant plaintiff and all other persons similarly situated such other and further relief as the Court may deem just, proper and equitable.

Dated: January 7, 1974
White Plains, New York

Respectfully submitted,

.....

THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY

Martin A. Schwartz, Esq., Of Counsel
Gerald A. Norlander, Esq., Of Counsel
Hilary Sohmer, Esq., Of Counsel
(member of the Bar of the State of Massachusetts)
Michael S. Dale, Of Counsel
Attorneys for Plaintiffs

(Affidavit of Service and Summons Omitted in Printing.)

Resignation Letter of Ronald Milne, Exhibit "A" to Amended Complaint.

157 Saratoga Ave.
Yonkers,
9th November 1973

Walter Sidlowski
Dear Sir,

I Ronald Milne a guard with Columbia University am resigning as of November 9th for personal reasons also to better myself with less Travel.

Sincerely yours,

RONALD MILNE

Notice of Denial of Public Assistance, Exhibit "B" to Amended Complaint.

County of Westchester
Department of Social Services

Division of Family and Child Social Services

Date: 11/16/73

Mr. Ronald Milne
157 Saratoga Ave.
Yonkers, N.Y.

Dear Mr. Milne

Your application for public assistance has been denied for the following reasons:

As per your application, you resigned from your job at Columbia Univ. on 11/2/73. A 75 day sanction is in effect from 11/2/73-1/15/74, before you would be Eligible for a Public Assistance Grant.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, New York, New York 12203.

Sincerely,

H. ACKERMAN
Name

Certification Examiner
Title

Notice of Fair Hearing, Exhibit "C" to Amended Complaint.

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

To: Ronald Milne
157 Saratoga Avenue
Yonkers, N.Y.
(Appellant's name and address)

a: *Nombre y dirección del apelante*

In response to your request for a fair hearing, your hearing will be held at the following time and place:

En respuesta a su petición por un juicio imparcial, su juicio será celebrado a la siguiente hora y lugar:

Place of Hearing:

Local del juicio

Date: 1/9/74

Fecha

Time:

Hora

INSTRUCTIONS TO PARTIES

1. You must bring to this hearing the following: This notice; witnesses, if any, all evidence that has a bearing on this case, including all books, records and other forms of evidence.

2. The appellant has the right to be represnted by an attorney or other representative, to present documentary evidence, and to examine opposing witnesses and evidence.

Notice of Fair Hearing, Exhibit "C" to Amended Complaint.

3. The agency must provide for transportation for the appellant, his representatives and witnesses, and child care and other costs related to attending the hearing, if necessary.

NOTICE TO APPELLANT

1. If you are not able to appear for your hearing at the time and place indicated above, please call telephone number and explain why.

2. If you no longer wish to have a fair hearing, please sign the statement below and return this notice to the New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

I wish to withdraw my request for a fair hearing.

Signed: .....

INSTRUCCIÓNES LOS PARTICIPANTES

1. Ud. debe traer a éste juicio lo siguiente: Esta notificación; testigos, si es que tiene algunos; todas las pruebas que tengan relación con este caso, incluyendo todos los libros, registros y otras formas de pruebas escritas.

2. En apelante tiene el direcho de ser representado por un abogado o cualquir classe de representante, para presentar documentos eviventes y examinar los testigos y pruebas escritas.

3. La agencia debe proveer para la transportación del apelante, sus representantes y testigos, si es necesario también, por el cuidado de los niños y otros gastos encurredos por atender al juicio.

Notice of Fair Hearing, Exhibit "C" to Amended Complaint.

AVISO AL APELANTE

1. Si a Ud. no se le hace posible comparecer al juicio a la hora y lugar arriba indicade, por favor llame al telefone No. y explique el porque.

2. Si Ud. ya no desea tener un juicio imparcial por favor firme la declaración más abajo y devuelva esta notificación al New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

Yo no deseo ya, tener un juicio.

Firma: .....

Category and Case No.

Programa y numero del caso

Agency:

Agencia

Representative:

Representante

Issue:

☐ Denial *Negacion* ☐ Failure to Act *Falta de actuacion* ☐ Other *Otro*

Date of Notice:

Fecha del aviso

☐ New *Nueva*
☐ Reschedules *Refijado*

Stipulation That Motion of Ronald Milne for a Temporary Restraining Order and the Convening of A Three-Judge Court Be Withdrawn Without Prejudice.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

IT IS HEREBY STIPULATED by and between The Legal Aid Society of Westchester County, Martin A. Schwartz, Esq., Of Counsel, attorney for Plaintiffs, Louis J. Lefkowitz, Esq., Attorney General of the State of New York, Amy Juviler, Esq., Of Counsel, attorney for Defendant Lavine, and Harry Lott, Esq., Attorney for the County of Westchester, Richard McAtamney, Esq., Of Counsel, that the motion of the named Plaintiff, Ronald Milne, for a temporary restraining order and the convening of a three-judge court, scheduled to be heard on January 11, 1974, at 2:30 p.m., may be withdrawn without prejudice to the rights of the named parties and members of the purported class of plaintiffs; and

IT IS STIPULATED that the time for defendants to answer or move be extended until February 8, 1974, or until such other time as may be mutually agreed upon by counsel, without prejudice to plaintiff's rights to commence any discovery proceedings in the interim; and

IT IS FURTHER STIPULATED that the time for plaintiffs to move, pursuant to Rule 11A (c) of the Southern District Civil Rules, for a determination that this action proceed as a class action be extended until 60 days after service of defendants' answers, if any.

Stipulation That Motion of Ronald Milne for a Temporary Restraining Order and the Convening of A Three-Judge Court Be Withdrawn Without Prejudice.

IN WITNESS WHEREOF, counsel for the parties as stated have executed this Stipulation, to be effective if and only if the named plaintiff's motion is allowed to be withdrawn as stipulated and agreed upon.

Dated: 1/14/74, White Plains, N.Y.

/s/ .....
MARTIN A. SCHWARTZ, Esquire
Attorney for Plaintiffs

Dated: 1/14/74, White Plains, N.Y.

/s/ .....
RICHARD MCATAMNEY, Esquire
Attorney for Defendant Berman

Dated: 1/14/74, White Plains, N.Y.

/s/ .....
AMY JUVILER, Esquire
Attorney for Defendant Lavine

SO ORDERED.

UNITED STATES DISTRICT JUDGE

Dated:

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the Affidavit of Roy Levee in support of injunctive relief, his Proposed Intervenor's-Complaint, and the Certificate of his attorney attached hereto, and upon the Amended Complaint in this action, it is

ORDERED, that Jule Sugarman, as Commissioner of the Department of Social Services of the City of New York, and the defendants herein show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 129, on the 25th day of January, 1974, at 2:30 P.M., or as soon thereafter as counsel can be heard why an order should not be made herein,

(1) Granting the motion of proposed intervenor-plaintiff Roy Levee,

(a) Pursuant to Rules 23 and 24(b) of the Federal Rules of Civil Procedure, to intervene in this action as a named party plaintiff;

(b) Pursuant to Rules 19(a), 20(a) and 21 of the Federal Rules of Civil Procedure, to add as a party defendant Jule Sugarman, individually and as Commissioner of the Department of Social Services of the City of New York;

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee.

(c) Pursuant to Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction enjoining Jule Sugarman and Abe Lavine, their agents and successors, from acting under color of Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7 to summarily disqualify Roy Levee from receiving Home Relief, emergency and temporary assistance necessary to forestall his eviction and prevent his utter destitution without providing an opportunity for a timely hearing.

The grounds for the motion are that it is appropriate for Roy Levee, a member of the alleged class of plaintiffs in the main action, to intervene as a named plaintiff, since he will raise legal claims in all material respects identical to the claims in the main action, and since he is in dire need of immediate and emergency relief from this Court to restrain persons from summarily disqualifying him from receiving public assistance necessary to prevent his imminent eviction and utter destitution after January 21, 1974, due to the arbitrary application of Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7 in violation of his rights secured by the Due Process and Equal Protection Clauses of the United States Constitution.

It appearing to the Court that the Commissioner of the Department of Social Services for the City of New York, Jule Sugarman, defendant Lavine, and their subordinates, will cause immediate and irreparable injury, damages and loss to Roy Levee by disqualifying him from receiving public assistance necessary to prevent his eviction and utter destitution, without an opporunity for a prompt hearing

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee.

under color of Section 131 of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, and the adverse parties and their attorneys having been heard in opposition, Jule Sugarman and Abe Lavine, as Commissioners of the Department of Social Services for the City of New York and the State of New York, respectively, and their subordinates, agents and successors be and they hereby are restrained from denying public assistance to the proposed intervenor-plaintiff, Roy Levee, under color of Section 131 of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, pending a final hearing and determination of his motion for a preliminary injunction; and it is further

ORDERED, that this Order to Show Cause, together with the papers upon which it is granted be served upon Jule Sugarman before the 21st day of January, 1974, by 6 P.M. and the other defendant before 6 P.M. on January 22, 1974.

Dated: January 21st, 1974, New York, New York.

INZER B. WYATT
United States District Judge

Issued at
5:45 P.M.

Affidavit of Roy Levee in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

ROY LEVEE, being duly sworn, does depose and say the following in support of his motion for injunctive relief:

1. I am a citizen of the United States and of the State of New York.

2. I live at 964 49th Street, Brooklyn, Kings County, New York.

3. I received public assistance from the Department of Social Services of the City of New York from about March 1, 1973 until August 1, 1973, when I voluntarily asked that my case be closed because I had found a job as a warehouse order picker at the Boerum & Pease Company, 192 Front Street, Brooklyn, New York.

4. I worked at the Boerum & Pease Company from August, 1973, until late November or early December, 1973. During that time I missed several days of work due to my wife's illness.

5. My employment at Boerum & Pease was terminated in late November or early December, 1973, and the reasons

given were that I had missed too many days of work and that I had not obtained approval from my employer to leave work early on the day before my discharge.

6. I did not voluntarily leave my employment.

7. I did not willfully provoke my own discharge from my employment.

8. Since losing my job I have tried, without success, to find other employment. I have reported every week to my union seeking employment. A copy of a letter from my union is annexed hereto as exhibit "A".

9. I have been unable to pay my rent since my employment was terminated. My landlord sued me for non-payment of rent, and he has obtained a judgment of $270.00 or possession; the execution of a warrant of eviction has been stayed through January 21, 1974. I will be subject to eviction after January 21, 1974 and I have no place in which to live. A copy of the landlord-tenant court judgment issued December 15, 1973, in favor of my landlord is annexed hereto as exhibit "B".

10. I have no money and I am destitute. On January 15, 1974, Thomas Scanton, my aftercare officer from the Narcotics Addition Control Commission, gave me a letter which stated that he knew I was destitute and in danger of being evicted, which I presented along with a copy of the judgment of eviction against me at the New York City Department of Social Services, Center E.E.C. #85, at 330 Jay Street, Brooklyn, New York. Jule Sugarman, as Commissioner of the Department of Social Services for the City of New York, is responsible for the administration of said Center.

11. At the welfare center I was informed that I was disqualified from receiving any public assistance until February 19, 1974. The notice stated, in pertinent part,

> "After careful consideration of your application for Public Assistance we find that you are ineligible for the following reasons: you have provoked the firing of your position [sic] & are therefore ineligible for Public Assistance for 75 days.*
>
> s/ M. Bernstein, 1/15/74
>
> * You will be eligible to reapply on 2/19/74."

A copy of said notice is annexed hereto as exhibit "C".

12. I have been disqualified from receiving public assistance that would forestall my eviction and prevent my utter destitution due to the application of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 358.7. I did not quit my job nor did I "provoke my firing" in order to obtain public assistance.

13. My attorney, Susan Seel, Esq., telephoned the "Fair Hearing Section", Office of Counsel, New York State Department of Social Services, Albany, New York, on January 16, 1974, and she explained my emergency situation and demanded an expedited "Fair Hearing" to review the determination which has summarily disqualified me from receiving even emergency or temporary assistance under Section 133 of the New York Social Services Law.

14. I have not received a "Fair Hearing", and, upon information and belief, a hearing could not be held, and a favorable decision rendered in time to prevent my eviction and destitution.

15. I believe that if I had a meaningful opportunity for a fair hearing, I could but rebut the 75 day presumption of the Department of Social Services that I voluntarily quit my job for the purpose of obtaining public assistance. I believe that the denial of a meaningful opportunity to rebut the presumption is a violation of my Constitutional rights to Due Process and Equal Protection of the laws.

16. I have made no previous application to any court for the relief sought herein, and my motion has been made by an Order to Show Cause rather than by Notice of Motion because I am faced with a dire emergency requiring an immediate temporary restraining order of this Court.

(Sworn to by Roy Levee, January 1, 1974.)

Correspondence From Union, Exhibit "A" to Levee Affidavit.

GENERAL WAREHOUSEMEN'S UNION LOCAL 852

of the

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS & WAREHOUSEMEN

JOHN COOK, President ALEX MACBAIN, Sec'y-Treas.

Room 851—130 West 42nd Street—New York City
Telephone LO 4-6270

1/17/74
Date

RE: ROY LEVEE
964 49TH STREET: BKLYN, N.Y.

Ledger No. 20170 (BOORUM & PEASE)

To Whom It May Concern:

Please be advised that the above-named Union member has reported to this office weekly seeking employment.

At the present time, we have no job available. However, as soon as one does become available, our member will be notified.

Any assistance you can give our member in the meantime, will be greatly appreciated.

Respectfully yours,

ALEX MAC BAIN
Alex Mac Bain,
Secretary-Treasurer

AMB:ev

Landlord-Tenant Court Judgment, Exhibit "B" to Levee Affidavit.

L & T Index #75768/73

After final trial judgment for Petitioner for $270.00

Warrant Stayed to 1/21/74.

Dated: 1/11/74.

Signed: G.B. Lawrence, /66.

JAN 15 1974

141 Livingston Street
Brooklyn, NY 11201

Notice of Ineligibility for Public Assistance for 75 Days, Exhibit "C" to Levee Affidavit.

DEPARTMENT OF SOCIAL SERVICES
Center: EEC #85
Address: 330 Jay St.

NOTICE OF NON-ACCEPTANCE

Mr. Roy Levee
964 49th St.
Bklyn., N.Y. 11219

P
Case Number

After careful consideration of your application for Public Assistance we find that you are not eligible for the

Notice of Ineligibility for Public Assistance for 75 Days, Exhibit "C" to Levee Affidavit.

following reasons: You have provoked the firing of your position & are therefore ineligible for Public Assistance for 75 • days.

You may wish to review the pamphlet which was given to you at the time of your application. It explains the provisions under which this type of public assistance is granted and your rights with respect to review of this decision.

Enclosed is a booklet describing the Medical Assistance Program as provided by the New York State Medicaid Program. If you wish to apply for Medical Assistance please fill out the two forms in the booklet, the "Application for Medical Assistance" (Form MA-11) and the "Certification of Medical Expenditures". Return the completed forms in the self-addressed envelope.

M. Bernstein	1/15/74	GpI
Unit Supervisor	Date	Caseload No.

• You will be eligible to reapply on 2/19/74.

Affidavit of John C. Gray, Attorney for Applicant for Intervention, Roy Levee in Support of Show Cause Order.

UNITED STATES DISTRICT COURT
Southern District of New York

[SAME TITLE]

State of New York }
County of Kings } ss.:

John C. Gray, Jr., being duly sworn, deposes and says as follows:

1. I am the attorney for applicant for intervention Roy Levee herein and, as such, am familiar with the circumstances of his proposed intervention in this action.

2. During the morning hours of January 21, 1973, I telephoned the offices of Louis J. Lefkowitz, attorney for defendant Lavine herein, and Norman Redlich, attorney for proposed defendant Jule Sugarman or Commissioner of the New York City Department of Social Services. I spoke with Mr. Joel Lewittes and Ms. Sheila Omansky in the offices of Mr. Lefkowitz and Mr. Redlich respectively and advised them that an application for a temporary restraining order in the within action and proposed intervention would be made to Hon. Inzer B. Wyatt in Room 129 of the United States Court House, Foley Square, New York, New York at 4:30 P.M. on January 21, 1974.

3. Also on January 21, 1974, my office received from defendant Lavine a copy of a "notice of fair hearing," a copy of which is annexed hereto, informing applicant for intervention Roy Levee that a fair hearing has been scheduled for Mr. Levee on January 30, 1974.

(Sworn to by John C. Gray, January 21, 1974.)

Affidavit of John C. Gray, Attorney for Applicant for Intervention, Roy Levee.

NOTICE OF FAIR HEARING

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

To: Mr. Roy Levee
964 49th St.
Brooklyn, N. Y. 11219
(Appellant's name and address)

a: *Nombre y dirección del apelante*

In response to your request for a fair hearing, your hearing will be held at the following time and place:

En respuesta a su petición por un juicio imparcial, su juicio será celebrado a la siguiente hora y lugar:

Place of Hearing:

Local del juicio

Date: 1/30/74

Fecha

Time:

Hora

INSTRUCTIONS TO PARTIES

1. You must bring to this hearing the following: This notice; witnesses, if any, all evidence that has a bearing on this case, including all books, records and other forms of evidence.

2. The appellant has the right to be represnted by an attorney or other representative, to present documentary evidence, and to examine opposing witnesses and evidence.

Affidavit of John C. Gray, Attorney for Applicant for Intervention, Roy Levee.

3. The agency must provide for transportation for the appellant, his representatives and witnesses, and child care and other costs related to attending the hearing, if necessary.

NOTICE TO APPELLANT

1. If you are not able to appear for your hearing at the time and place indicated above, please call telephone number and explain why.

2. If you no longer wish to have a fair hearing, please sign the statement below and return this notice to the New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

I wish to withdraw my request for a fair hearing.

Signed: .....

INSTRUCCIÓNES LOS PARTICIPANTES

1. Ud. debe traer a éste juicio lo siguiente: Esta notificación; testigos, si es que tiene algunos; todas las pruebas que tengan relación con este caso, incluyendo todos los libros, registros y otras formas de pruebas escritas.

2. En apelante tiene el direcho de ser representado por un abogado o cualquir classe de representante, para presentar documentos eviventes y examinar los testigos y pruebas escritas.

3. La agencia debe proveer para la transportación del apelante, sus representantes y testigos, si es necesario también, por el cuidado de los niños y otros gastos encurredos por atender al juicio.

Affidavit of John C. Gray, Attorney for Applicant for Intervention, Roy Levee.

AVISO AL APELANTE

1. Si a Ud. no se le hace posible comparecer al juicio a la hora y lugar arriba indicade, por favor llame al telefone No. y explique el porque.

2. Si Ud. ya no desea tener un juicio imparcial por favor firme la declaración más abajo y devuelva esta notificación al New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

Yo no deseo ya, tener un juicio.

Firma: .....

Category and Case No.

Programa y numero del caso

Agency:

Agencia

Representative:

Representante

Issue:

☐ Denial *Negacion* ☐ Failure to Act *Falta de actuacion* ☐ Other *Otro*

Date of Notice:

Fecha del aviso

☐ New *Nueva*
☐ Reschedules *Refijado*

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Douglas Streeter.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the Affidavit of Douglas Streeter in support of injunctive relief, his Proposed Intervenor's Complaint, and the Certificate of his attorney attached hereto, and upon the Amended Complaint in this action, and upon hearing in open court at which counsel for defendant Lavine was present, it is

ORDERED, that Leonard Berman, as Commissioner of the Department of Social Services of the County of Westchester, and the defendants herein, show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 705, on the 1st day of February, 1974, at 2:30 P.M., or as soon thereafter as counsel can be heard why an order should not be made herein,

(1) Granting the motion of proposed intervenor-plaintiff, Douglas Streeter,

(a) Pursuant to Rules 23 and 24(b) of the Federal Rules of Civil Procedure, to intervene in this action as a named party plaintiff;

(b) Pursuant to Rule 65 of the Federal Rules of Civil Procedure for a preliminary injunction enjoining Leonard Berman and Abe Lavine, their agents and successors, from acting under color of Section

131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7 to summarily disqualify Douglas Streeter from receiving Home Relief, emergency and temporary assistance necessary to forestall an eviction and prevent his utter destitution without providing an opportunity for a timely hearing.

The grounds for the motion are that it is appropriate for Douglas Streeter, a member of the alleged class of plaintiffs in the main action, to intervene as a named plaintiff, since he will raise legal claims in all material respects identical to the claims in the main action, and since he is in dire need of immediate and emergency relief from this Court to restrain persons from summarily disqualifying him from receiving public assistance necessary to prevent eviction from his premises and utter destitution after January 16, 1974, due to the arbitrary application of Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7 by defendants and their agents and employees, in violation of his rights secured by the Due Process and Equal Protection Clauses of the United States Constitution.

It appearing to the Court that the Commissioner of the Department of Social Services for the County of Westchester, Leonard Berman, defendant Lavine, and their subordinates, will cause immediate and irreparable injury, damage and loss to Douglas Streeter, by disqualifying him from receiving public assistance which he requires to prevent his eviction and utter destitution, without an opportunity for a prompt hearing, under color of Section 131 of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, before the adverse parties and that attorneys can

be heard in opposition, it is hereby ordered that Leonard Berman and Abe Lavine, as Commissioners of the Departments of Social Services for the County of Westchester and the State of New York, respectively, and their subordinates, agents and successors be and they hereby are restrained from denying public assistance to the proposed intervenor-plaintiff, Douglas Streeter, under color of Section 131 of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, pending a final hearing and determination of his motion for a preliminary injunction; and it is further

ORDERED, that posting of security by intervenor-plaintiff be waived, and it is

ORDERED, that this Order to Show Cause, together with the papers upon which it is granted be served upon the attorneys for each of the parties named herein, on or before the 28th day of January, 1974, by 8 P.M.

Dated: January 25, 1974, New York, New York.

s/ INZER B. WYATT
United States District Judge

Affidavit of Douglas Streeter in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

Douglas Streeter, being duly sworn, deposes and says the following in support of his motion for injunctive relief:

1. I am a citizen of the United States and of the State of New York.

2. I live at 435 North Main Street, Port Chester, New York.

3. I have been attending Bowie State College in the State of Maryland from September, 1970 to June, 1973, at which time I returned to Port Chester, New York.

4. That on or about the beginning of December, 1973, I secured a position as an orderly at the Port Chester Nursing Home at 100 High Street, Port Chester, New York.

5. I worked at a salary of $97.00 a week, from three (3) o'clock to eleven (11) o'clock in the evenings.

6. On or about the 28th day of December, I had finished my work and was to have two days off prior to returning to work on December 31, 1973.

7. On or about the 31st day of December, I took feverish and ill. I requested a friend, Ms. O'Neill, to call my job and inform them of my illness. She did so and was told that I should report to the nurses' office when I came back.

8. On or about the fourth day of January, I reported to work at the nurses' office and was told I was suspended. I explained my illness and my 'phone call and was told to call up my supervisor for further details.

9. I attempted to reach my supervisor for a week but she was not available. I was finally told that I was terminated.

10. I did not voluntarily leave my employment.

11. I did not wilfully provoke my own discharge from my employment.

12. I have attempted to find new employment since terminated but have been unsuccessful.

13. On or about the eleventh day of January, 1974, I reported to the local Port Chester District Office of the Department of Social Services, Westchester County, to request assistance. Leonard Berman, as Commissioner of the Department of Social Services of Westchester County, is responsible for administering said office.

14. At that time, I had no money for food and my January rent of $250.00 was not yet paid.

15. At that time, a social worker employed at that center charged me with provoking my discharge and she informed me that due to such fact I would not be able to

receive public assistance for seventy-five (75) days. A notice to that effect is annexed hereto as Exhibit "A".

16. On information and belief I have been disqualified from receiving public assistance and emergency aid to buy food and assist me in paying my rent to forestall eviction by application of the presumption set forth in § 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 358.7 when I did not "provoke my firing" in order to obtain public assistance.

17. At that time, I was not offered an opportunity by defendants or their employees for an expeditious hearing in order to rebut the presumption being applied against me.

18. On or about the 17th day of January, 1974, I received a notice that I was ineligible for assistance because I was terminated from my job. Said notice contained information that I could request a "Fair Hearing" if I were dissatisfied with the decision of the Department of Social Services. See Exh. "A".

19. I have not requested a "Fair Hearing." On information and belief, if I had requested a "Fair Hearing", I would not be able to secure a favorable decision after Fair Hearing for several weeks during which time my emergency needs would not be met.

20. I think the failure of defendant to offer me an expeditious and immediate Fair Hearing to allow me to rebut the presumption of the Department of Social Services that I provoked by discharge constitutes a denial of my Constitutional rights to Due Process and Equal Protection of the Law.

21. I am facing a current emergency of lack of sufficient funds to buy food or pay my rent which is due January 27, 1974.

22. I have made no previous application to any court for the relief sought herein and I am moving by Order to Show Cause because I am facing an emergency which requires a temporary restraining order of this Court.

(Sworn to by Douglas Streeter, January 24, 1974.)

Affidavit of Catherine Cronin, Attorney for Applicant for Intervention, Douglas Streeter in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

CATHERINE CRONIN, being duly sworn, deposes and says:

1. That she is employed by the Legal Aid Society of Westchester County and is one of the attorneys for the proposed intervenor-plaintiff, herein. As such, she is familiar with the fact and circumstances of the proposed intervention.

Affidavit of Catherine Cronin, Attorney for Applicant for Intervention, Douglas Streeter.

2. That on the 24th day of January, 1974, she phoned Ms. Amy Juviler, Esq., at the office of Louis Lefkowitz, attorney for defendant Lavine and called Sherwood Alexander, Esq. at the Westchester County Attorney's Office of Harry Lott, attorney for defendant Berman, herein.

3. She advised said attorneys that an application by order to show cause would be made before Judge Inzer B. Wyatt at the United States Court House at Foley Square, New York, New York on the 25th day of January in Room 129 at 2:30 o'clock in the afternoon requesting a temporary restraining order and bringing on a motion for intervention on behalf of intervenor-plaintiff.

4. That she requests waiver of security by intervernor-plaintiff due to his lack of money.

(Sworn to by Catherine Cronin, January 24, 1974.)

Affidavit of Silas Gilliam.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

SILAS GILLIAM, being duly sworn, deposes and says:

1. I am employed as an inspector in the Quality Control Bureau of the Department of Social Services of the County of Westchester.

2. In connection with my assigned duties, I have investigated certain work records relating to Douglas Streeter who, I understand, is making application to intervene as a party plaintiff in the above-captioned proceeding. He is also seeking a preliminary injunction enjoining Leonard Berman, Commissioner of Social Services of Westchester County, from acting to disqualify said Douglas Streeter from receiving public assistance and has obtained a temporary restraining order pending the hearing and determination of said motion for preliminary injunction.

3. I first examined the case record of Mr. Streeter which contained two application for public assistance, the first of which is dated October 31, 1973 and indicated that Douglas Streeter had worked for Life Savers at Port Chester, New York from August, 1973 to October 15, 1973 when he quit that employment, which information was verified by that employer.

4. On October 31, 1973 Mr. Streeter was advised in writing by the Department of Social Services that his application for public assistance had been denied because he had terminated his employment but that he would be eligible to reapply after a sanction period of seventy-five (75) days on December 30, 1973.

5. In said October application he represented further that he resided at 435 North Main Street, Port Chester, New York where monthly rent of $180.00 was shared by him with another individual.

6. A second application for public assistance was signed by Mr. Streeter on January 13, 1974 in which he stated that he resided at the same address and that he had been working for the Port Chester Nursing Home.

7. He indicated further that he had one roommate who was not applying for public assistance but was self-supporting and contributing to the support of the household with the rent now designated as $250.00 per month.

8. This application does not contain any additional information concerning the length of his employment at Port Chester Nursing Home but it has been ascertained from a personnel supervisor there that that employment had been terminated. He worked at this nursing home from December 5, 1973 to and including December 28, 1973.

9. According to records of Port Chester Nursing Home, Mr. Streeter had requested time off from work but had been advised that this could not be granted, except for emergency situations, during a one month probationary period for new employees. He was also advised that, in the event of illness causing absence from work for three

or more days, a written statement from a doctor relating to his illness would be required.

10. According to his employer, Mr. Streeter had a friend telephone that he was absent due to illness, said report being made on December 31, 1973 or three days after the last day that he had worked. A message was given to this friend to the effect that Mr. Streeter was required to call the nursing home on January 1, 1974 in order to retain his employment.

11. This employment was terminated as of January 2, 1974 when no phone call from Mr. Streeter had been received by the nursing home.

12. The foregoing statements are based upon my examination of the documents referred to therein, namely records of the Department of Social Services of the County of Westchester which include two applications for assistance made by Mr. Streeter and a copy of his attendance and payroll records which were supplied by his employer, Port Chester Nursing Home.

(Sworn to by Silas Gilliam, February 1, 1974.)

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the Affidavit of Robert C. Lee and the Certificate of his attorney attached hereto, and upon the Amended Complaint in this action, it is

ORDERED, that defendants show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 705, on the 15th day of February, 1974, at 2:30 P.M. or as soon thereafter as counsel can be heard, why an order should not be made herein, granting the motion of proposed intervenor-plaintiff Robert C. Lee,

(a) Pursuant to Rules 23 and 24(b) of the Federal Rules of Civil Procedure, to intervene in this action as a named party plaintiff;

(b) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining defendants, their agents and successors from sanctioning Robert C. Lee, under color of Section 131(10) of the New York Social Services Law and/or 18 NYCRR § 385.7, and enjoining defendants from denying temporary assistance for food and shelter under color of the aforesaid law and regulation, pending a final determination of this

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee.

action, waiving the security requirement of Rule 65(c).

(c) Pursuant to Rules 6(b), 7, 8, 23 and 24 of the Federal Rules of Civil Procedure, for an order allowing a reasonable extension of time to file a proposed intervenor's complaint, and/or deeming the affidavit of Robert C. Lee to be a verified pleading in the interim.

The grounds for the motion are that it is appropriate for Robert C. Lee, a member of the alleged class of plaintiffs in the main action, to intervene at this early stage of the proceedings, since the facts of his case, the legal claims he makes, and his claims for relief are all substantially identical to those of Ronald Milne. Further, Robert C. Lee is in dire need of immediate individual relief from a sanction imposed upon him by defendants under the law and regulation challenged in the main action. Because Robert C. Lee is utterly destitute, waiver of security requirements should be granted.

IT IS HEREBY ORDERED, that it appearing to the Court that the defendants will cause irreparable injury, damage and loss to Robert C. Lee unless they are restrained from imposing sanctions upon Robert C. Lee under color of Section 131(10) of the New York Social Services Law and/or 18 NYCRR § 385.7, before adverse parties and their attorneys can be heard in opposition, defendants Leonard Berman and Abe Lavine, their subordinates, agents and attorneys, be and they hereby are RESTRAINED from imposing sanctions and upon Robert C. Lee or disqualifying him from receiving any kind of public assistance to which he would otherwise be entitled, under color of Section 131(10)

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee.

of the New York Social Services Law and/or 18 NYCRR § 385.7, pending a final hearing and determination of his motion for a preliminary injunction, and it is further

ORDERED, that the security requirements of Rule 65 of the Federal Rules of Civil Procedure be waived, and it is further

ORDERED that this Order to Show Cause, together with the papers upon which it is granted be served personally upon the attorneys for defendants on or before the 1st day of February, 1974, by 6:00 P.M.

Dated: February 1st, 1974
at New York, N.Y.

s/ INZER B. WYATT
United States District Judge

Issued at 6 P.M.

Affidavit of Robert C. Lee in Support of Show Cause Order.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COUNTY OF WESTCHESTER }
STATE OF NEW YORK } ss.:

ROBERT C. LEE, being duly sworn, deposes and says as follows:

1. I am a citizen of the United States and the State of New York. I reside at 259 South 3rd Avenue, City of Mount Vernon, County of Westchester, New York.

2. I am 25 years of age.

3. I have worked steadily since 1967. My last employment was as a machinist, making JIC jig tools for telephone communications, with Jonard Industries, 134 Marbledale Road, Tuckahoe, New York, 10707.

4. My pay at Jonard Industries was $3.35 an hour, and my take home pay was $109 per week, or about $470 monthly.

5. On or about November 18, 1973, I was injured in a car accident in Yonkers, New York, and thereafter I was unable to attend work regularly due to my injuries. When I missed work, I supplied letters and documents to my employer from the lawyer handling my personal injury claims to explain the reasons for my absences.

6. I was dismissed from my employment on January 14, 1974. When I reported for work on that day, I was discharged by Jerry Roman, my employer. I did not want to lose my job.

7. After my discharge, I began looking for work, but I was unable to find employment. I am still seeking employment.

8. I have no savings. I live alone, and I have no family or friends who are able and willing to support me. I have entirely exhausted my resources. I have been unable to pay my rent since shortly after my accident in November, 1973, for the reason that my take-home pay from my employment was greately reduced because I had missed work.

9. I owe $360 to my landlord for rent through January 31, 1974, and I fear that I will be evicted from my home. A copy of a letter from my landlord, R & B Realty Co., 259 South 3rd Avenue, Mount Vernon, New York, demanding payment of my rent by February 1, 1974, is annexed hereto.

10. On January 29, 1974, I applied for public assistance in the category of Home Relief at the Mount Vernon District Office of the Westchester County Department of Social Services. I told persons there that I desperately needed assistance. They took my written application that day and told me to come in the next morning. I was not given any assistance.

11. The next morning, on January 30, 1974, I told the caseworker who interviewed me, a Mrs. Hawkins, that I was desperate, without money for food, rent and the other

necessities of life. Mrs. Hawkins told me there was nothing she could do, and that I would have to wait 75 days before I could get any aid. I was not given any emergency or temporary assistance.

12. I demanded to talk to Mrs. Hawkins' supervisor, who I believe was a Mr. Banks. I told him everything that had happened as is recited above. He called my former employer, and then told me to get a letter from him, and to come back the next day with the letter. I was not given any emergency or temporary assistance.

13. Today, January 31, 1974, I received a letter from my former employer, annexed hereto as an exhibit, which I presented to Mrs. Hawkins and her supervisor, along with the statement from my landlord concerning my rent arrearages. I told them that all I needed was help to tide me over between jobs, that I did not want welfare, but I needed money for my rent and something to eat.

14. Today, January 31, 1974, I was given a letter which stated in part,

> "Your application for public assistance has been denied for the following reasons:
>
> Your employment was terminated due to the following reasons: Combination of excessive excused and unexcused lateness and absenteeism."

A copy of said notice is annexed hereto. I was told that I could not be given assistance for 75 days.

15. I asked the supervisor, "what do I need that would make me eligible," and "what do I have to do in order to get some help." The supervisor told me there was nothing I could do, because he knew all he needed to know from

the letter from Mr. Roman. He said I should go to the Legal Aid Society.

16. Today I did not eat anything until 12:30 p.m. Yesterday I ate only a doughnut and drank tea. The day before I ate only lettuce. Today I had dizzy spells and cramps in my stomach. My attorney, Gerald A. Norlander, Esq., loaned me $3.00 to eat at a diner which this affidavit was prepared.

17. I believe that I was denied Home Relief under color of Section 131(10) of the New York Social Services Law, because that section provides for the 75 day disqualification for public assistance that was referred to by the persons who denied my application for assistance.

18. I believe that the Department of Social Services provides "Temporary Preinvestigation Grants" to other equally needed persons whose eligibility for assistance is in question, under Section 133 of the New York Social Services Law, which provides as follows:

> "If it shall appear that a person is in immediate need, temporary assistance or care shall be granted pending completion of an investigation."

19. I believe that the denial of temporary or emergency assistance to me under color of Section 131(10) of the New York Social Services Law, without giving me a fair chance to show that I did not voluntarily quit my job in order to get welfare, was arbitrary and a denial of due process of law and equal protection of the law that are promised and guaranteed to me under the Fourteenth Amendment to the United States Constitution.

20. I believe that Leonard Berman, the Commissioner of the Westchester County Department of Social Services,

has authorized or tolerated a policy of his department to absolutely deny every application for Home Relief made by a person who applies for assistance within 75 days after leaving or being discharged from employment. I believe that the persons who denied me application were acting under instructions of Leonard Berman or persons acting with his approval. Such instructions have not been made public as is required by law, and I believe that I have suffered grievous injury and damage as a result of defendant Berman's policy.

21. I believe that I have been punished and sanctioned under color of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 385.7 without a fair chance to have a hearing before I suffered the penalty imposed by the law, in violation of my right to due process of law that is guaranteed by the United States Constitution.

22. I believe that Abe Lavine, Commisioner of the New York State Department of Social Services, does not schedule emergency or expedited hearings in cases like mine, and that he does not render prompt decisions after hearings held in accordance with 18 N.Y.C.R.R. § 358, making it futile to expect any relief from my immediate distress caused by the penalty imposed upon me under color of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 385.7.

23. I believe that Section 131(10) of the New York Social Services Law is unconstitutional on its face because it creates an arbitrary, irrational, factually insupportable and impermissible presumption concerning the needs and motivations of persons seeking public assistance, and because the law permits welfare officials to arbitrarily sanction me without a prior hearing.

24. I believe that my interest in receiving public assistance is both a property and liberty interest which is protected by the United States Constitution, and that by denying me the opportunity for a meaningful hearing at a meaningful time on my disqualification from receiving assistance, Leonard Berman and Abe Lavine, individually and as commissioners of the New York State Department of Social Services, have violated rights secured to me by the Fourteenth Amendment to the United States Constitution.

25. I believe that the facts set forth in this affidavit and my claims set forth in Paragraphs "17", "18", "19", "20", "21", "22", "23", and "24" are substantially identical to the claims and facts in the Amended Complaint of Ronald Milne in the above captioned action, and I believe that this Court should therefore grant me leave to intervene in the main action as a named plaintiff on behalf of myself and all others similarly situated.

26. I believe that this court should grant a temporary restraining order to prevent respondents from causing further irreparable damage to me under color of Section 131(10) of the New York Social Services Law pending a hearing on my motion for a preliminary injunction.

27. I believe that the security requirement of Rule 65 of the Federal Rules of Civil Procedure should be waived because I am utterly destitute, because any and all public assistance paid to me by the Department of Social Services is subject to recovery under New York Social Services Law §§ 101-110, and because the amount of any such assistance is insignificant in comparison to the harm that I am suffering.

28. I am proceeding by Order to Show Cause rather than by Notice of Motion due to the extreme emergency and irreparable damage that I am suffering, and I believe that this Court should allow me a reasonable extension of time to prepare my proposed intervenor complaint, and/or deem this affidavit to be a verified pleading and application for intervention.

29. I make this affidavit in support of my motion to intervene as a representative party plaintiff in the above captioned action, in support of my motion for a preliminary injunction, and in support of my motion granting an extension of time to prepare a complaint.

30. I have made no previous application to any court for the relief sought herein.

WHEREFORE, I respectfully pray that my motion be granted in all respects.

(Sworn to by Robert C. Lee, January 31, 1974.)

Correspondence From Landlord, Exhibit "A" to Lee Affidavit.

R & B REALTY CORP.
259 So. 3rd Ave.
Mount Vernon, N. Y. 10550

1/30/74

To whom it Concern—

Robert C. Lee residing at 259 So. 3rd Ave. Apt. 2R Mount Vernon, N.Y.

Owe the following Rents for Apt. 2R. Furnished—

11/24/73—$ 40.00	Rents from
12/ 1/73—$ 40.00	9/22/73
12/ 8/73—$ 40.00	to
12/15/73—$ 40.00	11/23/73 paid
12/22/73—$ 40.00	
1/ 5/74—$ 40.00	If this rent isn't paid on before
1/12/74—$ 40.00	Feb. 1st, I will have to evict Tenant
1/19/74—$ 40.00	
1/26/74—$ 40.00	
$360.00	

R & B Realty Corp.
Agent
Robert Reeves

Letter From Former Employer, Exhibit "B" to Lee Affidavit.

JONARD INDUSTRIES CORP.
3047 Tibbett Avenue
Bronx, N. Y. 10463
(212) 549-7600
Cable Jictools

January 30, 1974

Department of Social Services
9 South First Avenue
Mount Vernon, New York 10550

Attention: Mrs. Hawkins

Re: Telephone Conversation of January 30, 1974

Dear Mrs. Hawkins:

This is to verify that Robert Lee's employment was terminated due to a combination of excessive excused and unexcused lateness and absenteeism which proved to be disruptive to our production schedule.

Very truly yours,

J. Roman
J. Roman

JR/sjm

Notice of Denial of Public Assistance, Exhibit "C" to Lee Affidavit.

COUNTY OF WESTCHESTER
DEPARTMENT OF SOCIAL SERVICES

DIVISION OF FAMILY AND CHILD SOCIAL SERVICES

Date: Jan. 31, 1974

Mr. Robert Lee
259 So. 3rd Ave.
Mt. Vernon, N.Y.

Dear Mr. Lee:

Your application for public assistance has been denied for the following reasons:

Your employment was terminated due to the following reasons: Combination of excessive excused and unexcused lateness and absenteeism.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

Sincerely,

By (Mrs.) V. HAWKINS
Title Sr. Examiner

Send Replies to: Division of Family and
Child Social Services
Use Address No. 4

Attorney's Certificate Pursuant to Rule 65 in Support of Show Cause Order.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

GERALD A. NORLANDER, being duly sworn, deposes and says as follows:

FIRST: I am one of the attorneys for the applicant for intervention Robert C. Lee herein, and as such, I am familiar with the circumstances of his proposed intervention in this action.

SECOND: On the afternoon of January 31, 1974, I telephoned the offices of Harry Lott, Esq., and Louis J. Lefkowitz, Esq., attorneys for defendants Berman and Lavine herein, respectively. I spoke with Sherwood Alexander, Esq., and Amy Juviler, Esq., in the offices of Mr. Lott and Mr. Lefkowitz, respectively, and I advised them that an application for a temporary restraining order and proposed intervention in this action would be made to Hon. Inzer B. Wyatt in Room 129 of the United States Court House, Foley Square, New York, New York at 2:30 p.m. on February 1, 1974.

THIRD: This affidavit is made pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(Sworn to by Gerald A. Norlander, January 31, 1974.)

Proposed Intervenor's Complaint of Robert C. Lee.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

I.

INTRODUCTION

1. This is an action authorized by 42 U.S.C. § 1983, brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, arising from the defendants' enforcement and application of a New York welfare statute, New York Social Services Law § 131(10) (McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 *N.Y.C.R.R.* § 385.7, in violation of rights secured to the plaintiffs by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Declaratory relief, injunctive relief and damages are sought.

2. The intervenor-plaintiff, who is indigent and needy, has been sanctioned and disqualified from receiving any public assistance by defendants and their agents for a period of seventy-five days, under color of the statute and regulation challenged herein, which establish a presumption that intervenor-plaintiff's employment was terminated for the purpose of qualifying for public assistance eligibility. Defendant Lavine has denied intervenor-plaintiff's request for a prompt hearing that would provide an opportunity for him to rebut the presumption challenged herein.

II.

JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), which provides for original jurisdiction of this Court in any civil action to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the United States Constitution. Intervenor-plaintiff's request for injunctive relief, retroactive benefits and damages is authorized by 42 U.S.C. § 1983, and his request for a declaratory judgment is authorized by 28 U.S.C. §§ 2201 and 2202.

III.

THREE-JUDGE COURT

4. This is a proper case for determination by a three-judge court, pursuant to 28 U.S.C. §§ 2281, 2284, since plaintiff seeks to restrain and enjoin the enforcement, operation and execution of New York Social Services Law § 131(10) (McKinney Supp. 1973) and to 18 *N.Y.C.R.R.* § 385.7, both of which are of statewide applicability, on the grounds that the statute and regulation are contrary to the United States Constitution.

IV.

INTERVENOR PLAINTIFF

5. Intervenor-plaintiff Robert C. Lee [hereinafter referred to as "plaintiff"] is an adult citizen of the United States and of the State of New York, who resides at 259 South Third Avenue, in the City of Mount Vernon, County of Westchester, New York.

V.

Class Action Allegations

6. Plaintiff is a member of a class of needy persons residing in New York State who have been or may be sanctioned and disqualified from receiving public assistance for a period of seventy-five days after the termination of their employment or reduction in earnings due to the enforcement and application by defendants of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7.

7. Plaintiff is also a member of a class of needy persons residing in New York State who have been, are, or may be sanctioned and disqualified by defendants from receiving any public assistance because of the enforcement of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and who have been, are, or may be denied the opportunity for a prompt hearing to rebut the defendants' presumption that their employment was terminated or earnings reduced for the purpose of qualifying for public assistance.

8. The named plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The classes described in Paragraphs "6" and "7", above, are so numerous that joinder of all their members in this action would be impracticable. The defendants or their agents and employees are believed to have knowledge of the number of persons disqualified for public assistance under the statute and regulation challenged herein, and thus they are believed to have knowledge of the exact or approximate size of the classes described in Paragraph

"6" and "7", which are believed to consist of several thousand persons. There are questions of law and fact common to the classes, namely, the constitutional validity of New York Social Services Law §131(10) and 18 *N.Y.C.R.R.* §385.7 and the constitutionality of denying plaintiffs a prompt hearing that would afford them an opportunity to rebut the statutory presumption. The claims of the representative party are typical of the claims of the classes. The Legal Aid Society of Westchester County, attorney for plaintiffs, will fairly and adequately protect the interests of the classes. The defendants have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

VI.

Defendants

9. Defendant Leonard Berman is sued individually and in his official capacity as Commissioner of the Westchester County Department of Social Services. He is responsible for the administration of New York State's public assistance programs in the County of Westchester, New York. His offices are at Room 432 of the Westchester County Office Building, White Plains, Westchester County, New York.

10. Defendant Abe Lavine is sued individually and in his official capacity as Commissioner of the New York State Department of Social Services. He is responsible for the administration of New York State's public assistance programs throughout New York State. He has an office located at Two World Trade Center, New York City, New York County, New York.

VII.

FACTUAL ALLEGATIONS

11. Plaintiff is 25 years of age, and he lives alone at 259 South Third Avenue, City of Mount Vernon, County of Westchester, New York.

12. Until January 14, 1974, plaintiff was employed as a machinist for $3.35 per hour by Jonard Industries, 134 Marbledale Road, Tuckahoe, New York, 10707.

13. On January 14, 1974, plaintiff's employment was terminated, and thereafter he sought new employment.

14. By January 29, 1974, plaintiff exhausted all his resources, and applied for public assistance at the Mount Vernon District Office of the Westchester County Department of Social Services. On January 29, 1974, plaintiff submitted a written application for assistance, and was told to return the next day for an interview.

15. On January 30, 1974, plaintiff informed a social case worker in the Mount Vernon District Office of the Westchester County Department of Social Services, a Mrs. Hawkins, that he desperately needed money for food, rent and other necessities, but Mrs. Hawkins told plaintiff that there was nothing she could do, because plaintiff had to wait until 75 days elapsed after termination of his employment before he would be eligible for any aid, notwithstanding his needs.

16. Plaintiff demanded to see Mrs. Hawkins' supervisor, believed to be a Mr. Banks who advised plaintiff to obtain a letter from his former employer. On January 31, 1974, plaintiff supplied a letter from his former employer, which

stated, in pertinent part, as follows:

> "This is to verify that Robert Lee's employment was terminated due to a combination of excessive excused and unexcused lateness and abstenteeism which proved to be disruptive to our production schedule."

A copy of said letter is annexed hereto as Exhibit "A".

17. By notice dated January 31, 1974, defendant Berman's agents denied plaintiff's application for home relief, giving the following reason:

> "Your employment was terminated due to the following reasons: Combination of excused and unexcused lateness and absenteeism."

The notice also notified plaintiff of his right to a "Fair Hearing":

> "If you are not satisfied with this decision you have the right to ask for a Fair Hearing. . . ."

A copy of said notice is annexed hereto as Exhibit "B".

18. Plaintiff was sanctioned and disqualified from receiving public assistance under color of Section 131(10) of the New York Social Services Law (McKinney Supp. 1973):

New York Social Services Law § 131(10):

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regula-

tion. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

19. Plaintiff was sanctioned and disqualified from receiving assistance pursuant to 18 *N.Y.C.R.R.* § 385.7, which provides as follows:

18 N.Y.C.R.R. § 385.7. Sanctions.

"(a) • • •

(ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

This regulation is enforced throughout New York State by defendant Lavine. Defendant Berman enforces the

regulation in Westchester County, New York, in accordance with the directives of defendant Lavine.

20. Defendant Lavine does not provide prompt "Fair Hearings" and decisions thereafter that would provide plaintiff with an opportunity to rebut the charges made by defendant Berman's agents that he voluntarily left his employment for the purpose of obtaining Home Relief, prior to the imposition of the sanction established under Section 131(10) of the New York Social Services Law.

21. Plaintiff's counsel, Gerald A. Norlander, Esq., requested, by a telephone call on February 5, 1974, to an employee of defendant Lavine's "Fair Hearing" Section, Office of Counsel, Department of Social Services, Albany, New York, that plaintiff be provided an expedited hearing. Plaintiff's counsel was informed that ordinarily a two-week time lapse occurs prior to the mailing of a Notice of Hearing, which is usually mailed at least one week prior to a "Fair Hearing". To date, no hearing has been scheduled or held, and, upon information and belief, a decision after hearing by defendant Lavine will not be rendered for at least one month after the date of a hearing.

22. If plaintiff had been accorded a prompt "Fair Hearing", he would have claimed that he did not voluntarily leave his employment for the purpose of obtaining public assistance.

23. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in a manner that created a conclusive presumption that plaintiff's employment was voluntarily terminated in order that plaintiff would be eligible for public assistance, and without affording plaintiff an opportunity to rebut the presumption within the seventy-five day statutory period.

24. Upon information and belief, defendant Berman has maliciously and in bad faith and with the intent to discourage needy persons from obtaining the public assistance they are legally entitled to, approved, tolerated and fostered the promulgation of memoranda, procedural guidelines, or other policies, customs or usages which direct employees of the Westchester County Department of Social Services to automatically deny public assistance to all needy applicants who apply within seventy-five days after the termination of their employment or reduction in earnings, without regard to evidence supplied by applicants which rebuts the presumption that their employment was voluntarily terminated or earnings reduced for the purpose of obtaining public assistance, and with the knowledge that it is futile for such applicants to obtain timely relief from a denial of assistance through defendant Lavine's "Fair Hearing" procedures. Memoranda, policy statements, procedural guidelines and policies, customs or usages are believed to be promulgated secretly and in bad faith violation of Part 300 of Title 18 of the New York Code of Rules and Regulations, which requires that such materials be published, approved by defendant Lavine, and available to plaintiff and interested persons.

25. Upon information and belief, defendant Lavine has, by his decisions after "Fair Hearings", in bad faith approved, encouraged, tolerated and fostered the application by defendant Berman of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7 as a conclusive presumption that disqualified plaintiff from receiving public assistance for seventy-five days.

26. Plaintiff has suffered hunger, humiliation and stigma resulting from his destitution, great hardship, injury and damage in the amount of $2,000 as a direct result of the operation and enforcement of Section 131(10) of the

New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and as a direct result of the malicious and bad faith application of this statute and regulation by defendants.

VII.

Legal Claims

27. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations, on their face and as applied to plaintiff, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because they establish a presumption of the motivation and need of applicants for public assistance that is arbitrary, irrational, factually insupportable, and unrelated to the purposes of New York's public assistance program, and because said statute and regulations are impermissibly vague and overbroad in failing to define conduct that constitutes a voluntary termination of employment.

28. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they sanction and disqualify needy persons from receiving public assistance without an opportunity for a prompt hearing which would afford them an opportunity to rebut the statutory presumption. Alternatively, the challenged statute and regulation as applied by defendants violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and Section 133 of the New York Social Services Law, because defendants do not accord persons sanctioned and disqualified under the challenged statute and

regulation emergency assistance pending the outcome of "Fair Hearings" provided by defendant Lavine.

29. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 so as to conclusively presume that plaintiff's employment was terminated for the purpose of qualifying for public assistance eligibility, without affording plaintiff an opportunity to rebut the presumption within the seventy-five day statutory sanction period in violation of plaintiff's rights guaranteed by the Fourteenth Amendment to the United States Constitution.

30. Defendants Berman and Lavine are liable to plaintiff Robert C. Lee in the amount of $2,000 compensatory damages, and in the amount of $2,500 for punitive damages, pursuant to 42 U.S.C. § 1983, by reason of their malicious and bad faith application of Section 131(10) of the New York Social Services Law in violation of plaintiff's rights to Due Process of Law and Equal Protection of the Law that are guaranteed by plaintiff under the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays on his own behalf and on behalf of all persons similarly situated, that this Court:

(A) Assume jurisdiction of this cause pursuant to 28 U.S.C. § 1343(3);

(B) Convene a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 to determine this controversy;

(C) Determine by order that this action be maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(D) Enter a final judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations on their face and as applied are contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

(E) Enter a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants; their agents, employees, successors and all others acting in concert with them from enforcing or applying the above statute and regulation without providing plaintiffs with prompt hearings and/or temporary or emergency assistance to plaintiffs pending a hearing;

(F) Enter a permanent injunction enjoining defendants, their agents, employees, successors and all others in concert with them from enforcing New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in such a manner as to conclusively presume that an applicant for public assistance had his employment terminated for the purpose of qualifying for public assistance;

(G) Enter a judgment awarding plaintiff and all others similarly situated public assistance grants retroactive to the date of their applications for assistance;

(H) Enter a judgment in favor of plaintiff Robert C. Lee against defendants Berman and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. § 1983 and Rule 54 of the

Proposed Intervenor's Complaint of Robert C. Lee.

Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Two Thousand Dollars ($2,000) and punitive damages of Two Thousand Five Hundred Dollars ($2,500);

(I) Award plaintiff his costs, disbursements and fees herein;

(J) Grant plaintiff and all other persons similarly situated such other and further relief as the Court may deem just, proper and equitable.

Dated: February 13th, 1974, Mount Vernon, N.Y.

Respectfully submitted,

THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
Martin A. Schwartz, Of Counsel
Gerald A. Norlander, Of Counsel
Attorneys for Plaintiff

Exhibits "A" and "B" to Proposed Intervenor's Complaint Are Printed *Supra* as Exhibits to the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee.

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Shirley Miller.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the Affidavit of Shirley Miller and the Certificate of her attorney attached hereto, and upon the Amended Complaint in this action, it is

ORDERED, that the plaintiff, defendants, and William J. Eagen, Jr., Commissioner of the Dutchess County Department of Social Services, show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 705, on the 8th day of March, 1974, at 10 A.M. or as soon thereafter as counsel can be heard, why an order should not be made herein, granting the motion of proposed intervenor-plaintiff Shirley Miller,

(a) Pursuant to Rules 23 and 24(b) of the Federal Rules of Civil Procedure, to intervene in this action as a named party plaintiff;

(b) Pursuant to Rules 19a, 20a and 21, to add as a party defendant William J. Eagen, Jr., individually and in his capacity as the Commissioner of the Dutchess County Department of Social Services;

(c) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining the defendants, and William J. Eagen, Jr., their agents and successors from sanctioning Shirley Miller, under color of Section 131(10) of the New York Social Services Law and/or 18 NYCRR § 385.7, and

Order to Show Cause for Order Granting Intervening and Temporary Restraining Order on Behalf of Shirley Miller.

enjoining defendants and William J. Eagen, Jr., from denying temporary assistance for food and shelter under color of the aforesaid law and regulation, pending a final determination of this action, waiving the security requirement of Rule 65(c);

(d) Pursuant to Rules 6(b), 7, 8, 23 and 24 of the Federal Rules of Civil Procedure, for an order allowing a reasonable extension of time to file a proposed intervenor's complaint, and/or deeming the affidavit of Shirley Miller to be a verified pleading pending determination of this motion.

The grounds for the motion are that it is appropriate for Shirley Miller, a member of the alleged class of plaintiffs in the main action, to intervene at this early stage of the proceedings, since the facts of her case, the legal claims she makes, and his claims for relief are all substantially identical to those of Ronald Milne. Further, Shirley Miller, is in dire need of immediate individual relief from a sanction imposed upon him by defendants under the law and regulation challenged in the main action. Because Shirley Miller is utterly destitute, waiver of security requirements should be granted.

ORDERED, that the security requirements of Rule 65 of the Federal Rules of Civil Procedure be waived, and it is further

ORDERED that this Order to Show Cause, together with the papers upon which it is granted be served personally upon the attorneys for defendants on or before the 19th day of February, 1974. By 5 p.m.

s/ INZER B. WYATT
United States District Judge

Dated: February 15, 1974.

Affidavit of Shirley Miller in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COUNTY OF DUTCHESS }
STATE OF NEW YORK } ss.:

SHIRLEY MILLER, being duly sworn, deposes and says as follows:

1. I am a citizen of the United States and the State of New York. I reside at 85 North Hamilton Street, City of Poughkeepsie, County of Dutchess, New York.

2. I am 35 years of age.

3. From October, 1973 to December 24, 1973, I was employed by Mrs. Henry Emmer, 18 Beechwood Avenue, Poughkeepsie, New York, as a part-time housekeeper at a salary of $50.00 per week.

4. On or about December 12, 1973, I applied for public assistance from the Dutchess County Department of Social Services in order to meet an arrearage in my rent. About January 18, 1974, I received a denial of my application because I was allegedly fired from my job. I was ruled ineligible for public assistance for 75 days. (See Exhibit "A".)

5. In fact, I was working for Mrs. Emmer at the time of my application on December 12, 1973 and continued to do so until about December 24, 1973.

6. About December 18, 1973, I realized that I was pregnant and immediately I made arrangements to have an abortion. On December 27, 1973, the abortion was performed by George Way, M.D. (See Exhibit "B".)

7. I was discharged from my job by Mrs. Emmer's because I had missed some days of work due to my pregnancy and the abortion.

8. After being discharged, I looked for work and reported to the New York State Employment Service for a job referral.

9. I had exhausted all available resources as of January 22, 1974 and I was facing possible eviction because I was $225.00 in arrears in my rent. With the assistance of Eugene Anderson, an investigator with the Mid-Hudson Valley Legal Services Project, I requested emergency assistance from the local welfare department.

10. At that time, Carol Weiner, a Senior Welfare Examiner with the local welfare department, informed Mr. Anderson and me that I was still ineligible because seventy-five days had not elapsed since I had been discharged from my job. I explained to Ms. Weiner that I had been discharged by Mrs. Emmer because I missed days of work due to my pregnancy and abortion. Ms. Weiner allowed that if I would produce a medical statement with respect to my pregnancy and abortion, my eligibility would be reconsidered.

11. On January 28, 1974, I delivered a statement from Vassar Brothers Hospital to Ms. Weiner regarding the pregnancy and abortion. (See Exhibit "C".) Ms. Weiner said that she needed further documentation of the length of my pregnancy and on January 29, 1974, I delivered another statement from Vassar Brothers Hospital setting forth the estimated length of my pregnancy. (See Exhibit "D".)

12. Ms. Weiner again rejected my request for emergency assistance even after the required documentation had been delivered to her.

13. Upon information and belief, on January 30, 1974, John D. Gorman, my attorney, contacted William J. Eagen, Sr., the Commissioner of the local welfare department and requested that he intervene in the matter and grant emergency assistance to me. On January 31, 1974, Mr. Gorman's request was denied.

14. A fair hearing on the question of the denial of assistance has been requested. A hearing has been scheduled for February 19, 1974, but any possible relief as a result of that hearing would not resolve my critical need at the present time.

15. I believe that I was denied Home Relief under color of Section 131(10) of the New York Social Services Law, because that section provides for the 75-day disqualification for public assistance that was referred to by the persons who denied my application for assistance.

16. I believe that the Department of Social Services provides "Temporary Preinvestigation Grants" to other equally needy persons whose eligibility for assistance is in question, under Section 133 of the New York Social Services Law, which provides as follows:

> "If it shall appear that a person is in immediate need, temporary assistance or care shall be granted pending completion of an investigation."

17. I believe that the denial of temporary or emergency assistance to me under color of Section 131(10) of the New York Social Services Law, without giving me a fair chance to show that I did not voluntarily quit my job in order to get welfare, was arbitrary and a denial of due process of law and equal protection of the law that are promised and guaranteed to me under the Fourteenth Amendment to the United States Constitution.

18. I believe that William J. Eagen, Sr., the Commissioner of the Dutchess County Department of Social Services, has authorized or tolerated a policy of his department to absolutely deny every application for Home Relief made by a person who applied for assistance within 75 days after leaving or being discharged from employment. I believe that the persons who denied my application were acting under instructions of William J. Eagen, Sr., or persons acting with his approval. I believe that I have suffered grievous injury and damage as a result of Mr. Eagen's policy.

19. I believe that I have been punished and sanctioned under color of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 385.7 without a fair chance to have a hearing before I suffered the penalty imposed by the law, in violation of my right to due process of law that is guaranteed by the United States Constitution.

20. I believe that Abe Lavine, Commissioner of the New York State Department of Social Services, does not schedule emergency or expedited hearings in cases like mine, and that he does not render prompt decisions after hearings held in accordance with 18 N.Y.C.R.R. § 358, making it futile to expect any relief from my immediate distress caused by the penalty imposed upon me under color of

Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 385.7.

21. I believe that Section 131(10) of the New York Social Services Law is unconstitutional on its face because it creates an arbitrary, irrational, factually insupportable and impermissible presumption concerning the needs and motivations of persons seeking public assistance, and because the law permits welfare officials to arbitrarily sanction me without a prior hearing.

22. I believe that my interest in receiving public assistance is both a property and liberty interest which is protected by the United States Constitution, and that by denying me the opportunity for a meaningful hearing at a meaningful time on my disqualification from receiving assistance, William J. Eagen, Sr., and Abe Lavine, individually and as commissioners of the New York State Department of Social Services, have violated rights secured to me by the Fourteenth Amendment of the United States Constitution.

23. I believe that the facts set forth in this affidavit and my claims set forth in Paragraphs "15", "16", "17", "18", "19", "20", "21", and "22" are substantially identical to the claims and facts in the Amended Complaint of Ronald Milne in the above captioned action, and I believe that this Court should therefore grant me leave to intervene in the main action as a named plaintiff on behalf of myself and all others similarly situated.

24. I believe that this court should grant a temporary restraining order to prevent respondents from causing further irreparable damage to me under color of Section 131(10) of the New York Social Services Law pending a hearing on my motion for a preliminary injunction.

Affidavit of Shirley Miller.

25. I believe that the security requirement of Rule 65 of the Federal Rules of Civil Procedure should be waived because I am utterly destitute, because any and all public assistance paid to me by the Department of Social Services is subject to recovery under New York Social Services Law §§ 101-110, and because the amount of any such assistance is insignificant in comparison to the harm that I am suffering.

26. I am proceeding by Order to Show Cause rather than by Notice of Motion due to the extreme emergency and irreparable damage that I am suffering, and I believe that this Court should allow me a reasonable extension of time to prepare my proposed intervenor complaint, and/or deem this affidavit to be a verified pleading and application for intervention.

27. I make this affidavit in support of my motion to intervene as a representative party plaintiff in the above captioned action, in support of my motion for a preliminary injunction, and in support of my motion granting an extension of time to prepare a complaint.

28. I have made no previous application to any court for the relief sought herein.

WHEREFORE, I respectfully pray that my motion be granted in all respects.

(Sworn to by Shirley Miller, February 10, 1974.)

Attorneys Certificate Pursuant to Rule 65 in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COUNTY OF DUTCHESS }
STATE OF NEW YORK } ss.:

JOHN D. GORMAN, being duly sworn, deposes and says as follows:

1. I am the Managing Attorney of the Poughkeepsie office of the Mid-Hudson Valley Legal Services Project, 50 Market Street, Poughkeepsie, New York, attorneys for Shirley Miller, and as such, I am familiar with the circumstances of his proposed intervention in this action.

2. On February 13, 1974, I telephoned John Kennedy, Esq., County Attorney of Dutchess County, attorney for William J. Eagen, Jr., and on February 14, 1974, I telephoned the office of Amy Juviler, Esq., Assistant Attorney General, attorney for Defendant Lavine and I advised them that an application for a temporary restraining order and proposed intervention in this action would be made to Hon. Inzer B. Wyatt in room 705 of the United States Courthouse, Foley Square, New York, New York at 2:30 pm on February 15, 1974.

3. This affidavit is made pursuant to Rule 65 of the Federal Rules of Civil Procedure.

s/ JOHN D. GORMAN.

(Sworn to by John D. Gorman, February 15, 1974.)

Medical Treatment, Exhibit "B" to Miller Affidavit.

Name Miller, Shirley. Date 12-28-73. Time 6:30 AM. Patient No 277992.

Address 85 No. Hamilton St, Poughkeepsie, NY. Zip 12601. Phone GR 1-6778.

Sex F. Race W. SMWD Div. Maiden Name Fiacco. Birth Date 1-13-39. Age 34.

Ref by Clinic. Prev. Adm. .....
Prev. Adm. Name .....

Accident No Cause .....

How Sent Car. Where from Home.

Admitting Diagnosis Pregnancy for Abortion (7Wks) M322, M322A, M322D—OK in Clinic .....
.....M322 OK? .....

Med ..... Surg ..... Obs X Gyn ..... Nb .....
Ent ..... E ..... Ortho. ..... Uro ..... Ped ..... Neur. Surg ..... Den ..... Neur .....
Derm .....

Denom. & Church Catholic—No Special Chuch. Patient's Occupation .....

Pt's. Empl. & Adrs. .....
☐ Ft. Pt. ☐ ..... Phone .....

Name & Adrs. Spouse or Parent .....
Phone .....

Name & Adrs. Nearest Relative Not Living with Patient None.

Notify Friend (Charles E. Johnson) Adrs. Same. Phone Above.

Resp. Party Patient. Relation .....
Domestic Part Time Pt. ☐ Pt. ☐

Medical Treatment, Exhibit "B" to Miller Affidavit.

Employer & Adr. Mrs. Emmer. Phone .....

Ams. Cert. No. & Suffix None. Medicare A ☐ B ☐ No. .....Comp. .....

Hosp. Ins. None. Policy No. ..... Soc. Sec. No. .....

Receiving Medicaid No. Status/No Will Not Apply. Disch. Date ..... Time .....

Remarks .....

Info. by Adv Clinic Inf 12-27-73-Rd. Indexes X. Adm. by MJR.

Name Miller, Shirley. Room SP. Rate $50.00. Dr. Way (Service).

Diagnosis Pregnancy, 7 wks., Induced Abortion.

Applications .....

Indicate Dates Suction Curettage Number.

Code Number .....

Dictated
Date ..... H.&P. ..... Drs Initials .....
Op. 12-74 ..... Drs. Initials ..... D.S. .....

Consultation .....

Discharged to ..... Date Dec 28 1973
Died ☐ Autopsy ☐
Autopsy M.D. ☐ ☐

Signature of Attending Physician
.....

Statement From Hospital to Welfare Examiner, Exhibit "C" to Miller Affidavit.

VASSAR BROTHERS HOSPITAL
Reade Place
Poughkeepsie, New York 12601

January 24, 1974

RE: Mrs. Shirley Miller
85 North Hamilton Street

To whom it may concern:

We first saw Mrs. Miller in the Social Service Department of Vassar Brothers Hospital on 12/23/73 at which time she was seeking help to arrange an abortion. We accepted her as being eligible for care in our clinic and she was given an appointment to be examined by Dr. Way on 12/26/73.

On 12/26/73 she was examined by Dr. Way and arrangements were made for her admission to the hospital for an abortion on 12/28/73. She was admitted on that date and the abortion was performed.

Sincerely,

SARAH JO DAVIS
(Miss) Sarah Jo Davis
Director
Social Service Department

Second Statement From Hospital to Welfare Examiner, Exhibit "D" to Miller Affidavit.

VASSAR BROTHERS HOSPITAL
Reade Place
Poughkeepsie, New York 12601

Mrs. Weiner
Dut. Co. Dept. of Social Service
20 Maple Street
Poughkeepsie, New York 12601

January 28, 1974

My dear Mrs. Weiner:

RE: Shirley Miller

Our records on Shirley Miller indicate that we first saw her on 12/20/73. She had been to the offices of Doctors Idelson, Cohen, Hurst, Kardon and was scheduled to have an abortion by them but was unable to produce the fee required so came to us requesting an abortion through our clinic. She had had a positive pregnancy test at St. Francis Hospital on 12/18/73 (see copy of verification of pregnancy test on that date).

She was given an appointment to be examined in our clinic on 12/26/73 on which date she was examined by Dr. Way, who estimated her to be seven weeks pregnant and scheduled her for termination of pregnancy by suction curettage on 12/28/73 (see copy of admission and discharge including admission diagnosis, final diagnosis, and the operation involved signed by Dr. Way in the lower right hand corner).

She has a follow-up examination in GYN clinic on 1/16/74 (copy is attached) and was advised to return to clinic in two weeks for further evaluation.

Sincerely,

SARAH JO DAVIS
(Miss) Sarah Jo Davis
Director
Social Service Department

Order for Three-Judge Court, Wyatt, J.
February 20, 1974.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, on his behalf and on behalf of all other persons similarly situated,

Plaintiff,

against

LEONARD BERGMAN, individually and as Commissioner of the Westchester County Department of Social Services; and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants.

This action was commenced on December 19, 1973 and an amended complaint was filed on January 8, 1974.

The action is intended as a class action but no determination as to this has yet been made by the court. Fed. R. Civ. R. 23(c)(1)

The amended complaint asked, among other things, that a three-judge court be convened (28 U.S.C. §§ 2281, 2284); and that the defendant state and county officials be enjoined from enforcing Section 131(10) of the New York Social Services Law (52A McKinney's Cumulative Annual Pocket Part for use in 1973-1974). This section in substance provides that a person who voluntarily leaves his job to qualify for home relief or other public assistance

shall be disqualified from receiving such assistance for 75 days; it is further provided that one who applies for home relief or other assistance within 75 days after voluntarily leaving his job shall be presumed to have done so for the purpose of qualifying for such assistance.

Judge Carter (as the Part I judge) made an order requiring defendants to show cause on January 9, 1974, why an order should not be made that plaintiff Milne is entitled to emergency public assistance "pending an expedited hearing and determination pursuant to 28 U.S.C. §§ 2281 and 2284 as to the constitutionality" of the New York statute. This motion was made returnable before me, to whom the action had been assigned in normal course.

Counsel for Milne by letter dated January 9, 1974, advised me that the motion initiated by Judge Carter's order had been withdrawn. Leave to withdraw the motion was granted by me by (endorsed) order filed January 11, 1974. A stipulation between all counsel, among other things withdrawing the Milne motion, was submitted and approved by order filed January 16, 1974. While not a matter of record, it seems that Milne was in fact granted public assistance.

On application of Roy Levee, I made an order on January 21, 1974 (filed January 23, 1974) requiring defendants to show cause on January 25 why, among other things, Levee should not be allowed to intervene as a party plaintiff and why a preliminary injunction should not issue against defendants denying public assistance to Levee under color of New York Social Services Law § 131 (10) which was claimed to be unconstitutional. This order to show cause was (as noted above) returnable on January 25, at which time I was informed that Levee's application

for public assistance would be processed within two weeks and for this and other reasons his motion was in all respects denied by order dated January 25 and filed January 28, 1974.

On application of Douglas Streeter, I made an order on January 25, 1974 (filed January 29, 1974) requiring defendants to show cause on February 1, 1974, why Streeter should not be allowed to intervene as a party plaintiff and why a preliminary injunction should not issue against defendants denying public assistance to Streeter under color of New York Social Services Law § 131(10) which was claimed to be unconstitutional. This order to show cause was (as noted above) returnable on February 1, at which time argument was heard and decision reserved.

On application of Robert C. Lee, I made an order on February 1, 1974 (filed February 4, 1974) requiring defendants to show cause on February 15 why Lee should not be allowed to intervene as a party plaintiff and why a preliminary injunction should not issue against defendants denying public assistance to Lee under color of New York Social Law § 131(10) which was claimed to be unconstitutional. This order to show cause was (as noted above) returnable on February 15, 1974, at which time I advised the parties that it appeared to be my duty to notify the chief Judge of the Circuit so that a three-judge court can be constituted (28 U.S.C. § 2284). The motion was adjourned to March 8, 1974, at 2:30 p.m. in Room 705, to await the convening of the three-judge court.

On February 15, 1974, an order was presented by Dutchess County Legal Aid Society on behalf of a client. I signed this order which requires defendants to show cause on March 8, 1974, why the applicant should not be

allowed to intervene as a party plaintiff and why a preliminary injunction should not issue substantially as asked by applicants Streeter and Lee.

The constitutional questions raised seem to me to be sufficiently substantial that a three-judge court is required. *Ex Parte Poresky,* 296 U.S. 30 (1933); *Idlewild Bon Voyage Liquer Corp.* v. *Epstein,* 370 U.S. 713, 715 (1962); see also Gaddis v. Wyman, 304 F.Supp. 713 (Mansfield, J., S.D.N.Y. 1969).

It is true that Milne is not now asking for a preliminary injunction but he is still plaintiff at the moment and his amended complaint asks for a permanent injunction. Streeter, Lee, and the client of the Dutchess County Legal Aid Society have not yet been permitted to intervene but they are each asking for a preliminary injunction and the provisions of 28 U.S.C. § 2284 seem applicable.

Accordingly, it is determined that a three-judge court is required and that the Chief Judge of the Circuit should be notified.

So ORDERED.

Dated: February 20, 1974.

/s/ INZER B. WYATT
United States District Judge

Order of January 25, 1974, Denial of Roy Levee's Motion for Intervention.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

MEMORANDUM

After hearing in open Court, and in part on the statement of counsel (James Abramson, Esq.) to the Department of Social Services that the department will process the proposed intervenor's application for public assistance within two weeks this application is in all respects denied.

So Ordered.

/s/ INZER B. WYATT
U.S.D.J.

January 25, 1974

Plaintiff's Request for Production of Documents by Defendant Berman.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff hereby requests that the defendant Commissioner of the Westchester County Department of Social Services, Leonard Berman, produce and permit plaintiff to inspect and photocopy the following documents in accordance with Rule 34 of the Federal Rules of Civil Procedure:

1. All instructions promulgated by the Westchester County Department of Social Services, and/or its Commissioner and their subordinates, in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. § 385.7, including, without limitation:

   (a) Letters or memoranda from Mr. John Allen, Director of Family and Child Social Services, to supervisors of district offices of the Westchester County Department of Social Services;

   (b) Letters or memoranda from Mrs. Katherine Hayden, Public Assistance Supervisor, to supervisors of district offices of the Westchester County Department of Social Services;

   (c) Regulations and rules, Caseworker Manual bulletins, memoranda, directives, policy statements and other administrative guidelines;

(d) Document(s) entitled "Eligibility Staff Instructions";

(e) Training materials and manuals for Eligibility Staff, Certification Examiners and other persons who make decisions on applications for public assistance;

(f) "Quality Control" manuals, workbooks and other instructions for the review or auditing of determinations of eligibility for public assistance;

(g) Document(s) entitled "Training Guidelines."

2. Each and every "Decision After Fair Hearing" rendered by Commissioners of the New York State Department of Social Services, or their subordinates, in the possession, custody or control of the Westchester County Department of Social Services which cites, interprets, applies, construes or otherwise enforces Section 131(10) of the New York Social Services Law and/or Part 385.7 of the New York Code of Rules and Regulations,

(a) In the year 1971,

(b) In the year 1972,

(c) In the year 1973,

(d) In the year 1974.

3. Each and every memorandum, letter, directive, policy statement or other administrative guideline promulgated in connection with any decision described in Paragraph "2" above by any officer or employee of the Westchester County Department of Social Services in order to comply with any direction issued pursuant to 18 N.Y.C.R.R. §§ 358.21 and .23.

4. All studies, reports, evaluations, Quality Control audit reports or books of the Westchester County Department of Social Services which describe the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or Part 385.7 of the New York Code or Rules and Regulations.

5. All reports, records, forms, statistics or data summaries compiled in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and Part 385.7 of the New York Code of Rules and Regulations, including, without limitation, the following items:

(a) A form entitled "Work Reform Monthly Report, DSS Form No. 1790";

(b) A form entitled "Statistical Report on Specified Items for Applications Disposed or Cases Closed in PA Program, DSS Form No. 636";

(c) A form entitled "Monthly Statistical Report on Reasons for Closing PA Cases, DSS Form No. 848";

(d) A form entitled "Monthly Statistical Report on Home Relief, DSS Form No. 986";

(e) A form entitled "Statistical Information Closures, DSS Form No. 1192";

(f) A form entitled "Register of Applications and Authorization of Emergency Assistance, DSS Form No. 880";

(g) A form entitled "Monthly Statistical Report on Reasons for Opening Public Assistance Cases, DSS Form No. 981"; and

For the items (a)-(g) above, provide (i) a blank form, and (ii) the most recent form submitted to the New York State Department of Social Services by the Westchester County Department of Social Services.

6. The entire case file of plaintiff Ronald Milne, together with all letters, memoranda or other papers in the possession, custody or control of the Westchester County Department of Social Services relating to the denial of Milne's application for public assistance, including, without limitation.

   (a) Milne's application for public assistance dated on or about November 12, 1973, and papers prepared in connection with said application;

   (b) Papers, notes or memoranda of Mr. Ackerman, Certification Examiner in a Yonkers office of the Westchester County Department of Social Services;

   (c) Papers, notes or memoranda of Mr. Rosenthal, Supervisor of Casework in a Yonkers office of the Westchester County Department of Social Services;

   (d) Papers, notes or memoranda of Mr. Joseph R. Schmitt, Esq., Deputy Commissioner of Legal Affairs, Westchester County Department of Social Services.

It is requested that the aforesaid production be made on the 28th day of February, 1974, at 10:00 a.m. at the offices of plaintiff's attorney, The Legal Aid Society of Westchester County, 56 Grand Street, White Plains, New York 10601. It is requested that defendant provide plaintiff

with a list or inventory of documents when they are produced, and that plaintiff's attorneys be allowed a reasonable time of at least one week for inspection and photocopying of documents.

Dated: January 22, 1974.

s/ Martin A. Schwartz
The Legal Aid Society of
Westchester County

Martin A. Schwartz, Esq.,
Of Counsel
Gerald A. Norlander, Esq.,
Of Counsel
Hilary Sohmer, Esq., Of Counsel
Michael S. Dale, Esq., Of Counsel
Attorneys for Plaintiff

Plaintiff's First Interrogatories to Defendant Berman.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

To:

HARRY LOTT, Esq.
County Attorney for the County
of Westchester, New York
RICHARD A. MCATAMNEY, Esq., Of Counsel
Attorneys for Defendant Berman
County Office Building
White Plains, New York 10601

Plaintiff hereby requests, pursuant to Rule 33 of the Federal Rules of Civil Procedure, that the defendant Commissioner of the Westchester County Department of Social Services, Leonard Berman, or his duly authorized subordinate or attorneys, answer under oath the following interrogatories within thirty (30) days. Defendant is requested to set out each interrogatory prior to the answer directed to it.

1. State the exact or approximate number of persons disqualified from receiving public assistance by the Westchester County Department of Social Services due to the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or Part 385.7 of the New York Code of Rules and Regulations,

   (a) In the year 1971,

   (b) In the year 1972,

Plaintiff's First Interrogatories to Defendant Berman.

(c) In the year 1973, and

1.1 If such information is not presently available, state whether the number of persons disqualified under said law and regulation from receiving assistance for each of the above years exceeds

(a) 50,

(b) 100,

(c) 250,

(d) 500,

(e) 1000, and

provide such information as is available which indicates the number of persons disqualified from receiving assistance under the aforesaid statute and regulation.

2. State whether the Westchester County Department of Social Services maintains records of all applications for public assistance, and if so, identify the person or persons having custody of such records, and

   2.1 State whether such records are compiled coded and retained in whole or in part by means of electronic data processing or information retrieval systems, and if so, identify the make and model number of any computer used for such systems, and identify the person or persons responsible for programming any such computer, and

   2.2 State whether a computer card is prepared for every application for public assistance, upon which is coded the reason for any denial of assistance, and

   2.3 State whether denials of applications for public assistance due to the operation, enforcement or ap-

plication of Social Services Law 131(10) and/or Part 385.7 of the New York Code of Rules and Regulations are recorded and identified by the code "LO3", and if not, identify the code used to record such denials, and

2.4 State whether a "computer printout" of the number and identity of persons disqualified from receiving Home Relief under Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7 could be prepared, and if not, state the basis for any such claim.

3. Identify all written interpretations, rules, regulations, policies, directives, procedures, letters, administrative guidelines or other papers prepared in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or Part 385.7 of 18 N.Y.C.R.R. § 385.7, including, without limitation, Manual Bulletins, Administrative Letters, Caseworker's Manual Bulletins, training materials, "Quality Contol" materials, and

   (a) Letters and/or memoranda from Mr. John Allen, Director of Family and Child Social Services. to supervisors of district offices of the Westchester County Department of Social Services, or to other persons, in connection with the aforesaid law and regulation, and

   (b) Letters and/or memoranda from Mrs. Katherine Hayden, Public Assistance Supervisor, to supervisors of district offices of the Westchester County Department of Social Services, or to other persons, in connection with the aforesaid law and regulation, and

   (c) Any memoranda prepared in connection with the disqualification of plaintiff Milne under the aforesaid law and regulation, including any memoranda, notes or letters of a Mr. Rosenthal, a Casework Supervisor in the Yonkers office of the Westchester County Department of Social Services, and Mr. Joseph R. Schmitt, Deputy Commissioner for Legal Affairs, Westchester County Department of Social Services.

4. Identify each and every written regulation, administrative interpretation, directive, policy statement, procedural guide, bulletin, administrative letter or other document which defines the meaning of the "voluntarily termination of employment" or "voluntary reduction of earning capacity'' in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7.

5. Identify each and every "Decision After Fair Hearing'' rendered by Commissioners of the New York State Department of Social Services, or their subordinates, after "Fair Hearings" held to review determinations of the Westchester County Department of Social Services, which cites, interprets, applies, construes or otherwise enforces Section 131(10) of the New York Social Services Law and/or Part 385.7 of 18 N.Y.C.R.R.,

   (a) In the year 1971,

   (b) In the year 1972,

   (c) In the year 1973, and

   (d) In the year 1974.

6. Identify each and every regulation, rule, directive, policy statement or other administrative guideline or other document prepared in connection with provision of emergency or temporary assistance to applicants for public assistance.

7. State whether the Westchester County Department of Social Services has ever been directed by any Commissioner of the New York State Department of Social Services to revise its policies in connection with its application, enforcement and operation of Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, pursuant to 18 N.Y.C.R.R. §§ 358.21 and 23, and if so, identify each and every document prepared in connection with such directives.

8. Identify all studies, reports, evaluations, Quality Control audit reports or books of the Westchester County Department of Social Services which describe the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7.

9. Identify each and every employee of the Westchester County Department of Social Services who participated in any way in the disqualification of plaintiff Ronald Milne from receiving Home Relief, including supervisory personnel who approved of such disqualification, and describe the acts of each of the following employees of the Westchester County Department of Social Services in connection with such disqualification:

   (a) Mr. Herbert Ackerman, Certification Examiner/ Unit Supervisor of Case Work;

   (b) Mr. Stewart Rosenthal, Senior Supervisor of Case Work;

   (c) Mr. Joseph R. Schmitt, Deputy Commissioner for Legal Affairs.

PLEASE TAKE NOTICE that a copy of such answers must be served upon the undersigned within 30 days after service of these interrogatories.

Dated: January 24, 1974.

s/ MARTIN A. SCHWARTZ
The Legal Aid Society of
Westchester County

Martin A. Schwartz, Esq., Of Counsel
Gerald A. Norlander, Esq.,
Of Counsel
Hilary Sohmer, Esq., Of Counsel
Michael S. Dale, Esq., Of Counsel

Plaintiff's First Interrogatories to Defendant Lavine.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

To:

LOUIS J. LEFKOWITZ
Attorney General for the State of New York
AMY JULIVER, Esq., Of Counsel
Attorneys for Defendant Lavine

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, the plaintiff requests that the defendant Commissioner of the New York State Department of Social Services, Abe Lavine, or his duly authorized agent, answer under oath the following interrogatories by furnishing information available to him. Defendant is requested to set out each interrogatory prior to the answer directed to it.

1. State the exact or approximate number of persons disqualified from receiving public assistance in New York State due to the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or Part 385.7 of the New York Code of Rules and Regulations,

   (a) In the year 1971,

   (b) In the year 1972,

   (c) In the year 1973, and

   1.1 If the above information is not presently available, provide such information as is available which indicates the number of persons disqualified under

said law and regulation, and state for each year whether the number of such persons exceeds

(a) 500,

(b) 1,000,

(c) 2,000,

(d) 5,000, and state the basis for such estimates.

2. Identify all written interpretations, rules, regulations, policies, directives, procedures, letters, administrative guidelines or other papers prepared in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or Part 385.7 of 18 N.Y.C.R.R. § 385.7, including, without limitation, "Manual Bulletins", "Administrative Letters", and "Informational Letters."

3. Identify each and every "Decision After Fair Hearing" rendered by (or on behalf of) Commissioners of the New York State Department of Social Services pursuant to 18 N.Y.C.R.R. § 385.18, which cites, construes, enforces or applies Section 131(10) of the New York Social Services Law and/or Part 385.7 of 18 N.Y.C.R.R. § 385.7, and of such decisions,

   (a) Identify each and every decision in which it has been held that the appellant successfully rebutted the 75-day presumption established by said law and regulation, and

   (b) For each decision identified in "(a)" above, state the time lapse between the date of original disqualification for assistance and the date of implementation of a decision favorable to the appellant.

4. State the average time lapse between the date of a request for a "Fair Hearing" made by a person disqualified from receiving public assistance under Section 131(10) of the New York Social Services Law and/or Part 385.7 of 18 N.Y.C.R.R. and

   (a) The date of a hearing held pursuant to Part 385.7 of 18 N.Y.C.R.R., and

   (b) The date of a "Decision After Fair Hearing" rendered pursuant to 18 N.Y.C.R.R. § 358.18, and, if such decision is favorable to an appellant, the date of an award of benefits.

   4.1 If the above information is not presently available, provide such information as is available which indicates the average time lapse between the date of a request for a hearing and the date of implementation of a favorable decision after a hearing, for persons disqualified from receiving assistance under the above law and regulation, and state whether such time lapse exceeds

   (a) 10 days,

   (b) 20 days,

   (c) 30 days,

   (d) 45 days,

   (e) 75 days, and state the basis for such estimates.

5. State whether temporary or emergency assistance is granted under Section 133 of the New York Social Services Law, or under any other provision of law or regulation, to needy persons disqualified from receiving assistance under Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7,

pending decisions after "Fair Hearings" requested by such persons, and

5.1 Identify all rules, regulations, policy statements, guidelines or other administrative directives issued in connection with the provision of emergency assistance to Home Relief applicants.

PLEASE TAKE NOTICE that a copy of such answers must be served upon the undersigned within 30 days after service of these interrogatories.

Dated: January 22nd, 1974.

/s/ MARTIN A. SCHWARTZ
THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY

Martin A. Schwartz, Esq.,
Of Counsel
Gerald A. Norlander, Esq.,
Of Counsel
Hilary Sohmer, Esq., Of Counsel
Michael S. Dale, Esq., Of Counsel
Attorneys for Plaintiff

Plaintiff's Request for Production of Documents by Defendant Lavine.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiff hereby requests that the defendant Commissioner of the New York State Department of Social Services, Abe Lavine, produce and permit plaintiff to inspect and photocopy the following documents in accordance with Rule 34 of the Federal Rules of Civil Procedure:

1. All forms, statistical reports or other data summaries compiled in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and Part 385.7 of the New York Code of Rules and Regulations, including, without limitation, the following items:

   (a) A form entitled "Work Reform Monthly Report, DSS Form No. 1790";

   (b) A form entitled "Statistical Report on Specified Items for Applications Disposed or Cases closed in PA Program, DSS Form No. 636";

   (c) A form entitled "Monthly Statistical Report on Reasons for Closing PA Cases, DSS Form No. 848";

   (d) A form entitled "Monthly Statistical Report on Home Relief, DSS Form No. 986";

   (e) A form entitled "Statistical Information Closures, DSS Form No. 1192";

Plaintiff's Request for Production of Documents by Defendant Lavine.

   (f) A form entitled "Register of Applications and Authorization of Emergency Assistance, DSS Form No. 880";

   (g) A form entitled "Monthly Statistical Report on Reasons for Opening Public Assistance Cases, DSS Form No. 981; and

   For the items (a)-(g) above, provide (i) a blank form, (ii) the most recent form submitted to the New York State Department of Social Services by the Westchester County Department of Social Services, and (iii) the most recent statewide compilation or tabulation of each item.

2. All reports, studies or other evaluations, including Quality Control Audit reports, concerning the operation of the "Governor's 1971 Welfare Reform Program" and/or the operation and application of Section 131(10) of the New York Social Services Law.

3. All instructions promulgated by the New York State Department of Social Services and/or its Commissioners concerning the operation, enforcement and application of Section 131(10) of the New York Social Services Law, including, without limitation,

   (a) Regulations, Rules, Manual Bulletins, Administrative Letters, Informational Letters and other policy statements;

   (b) A document entitled "Eligibility Staff Instructions";

   (c) A document entitled "Training Guidelines";

   (d) A document entitled "Eligibility Process Workflow";

Plaintiff's Request for Production of Documents by Defendant Lavine.

(e) A document entitled "Redi-Reference Guide".

4. All "Decisions After Fair Hearing" rendered by Commissioners of the New York State Department of Social Services or theiir subordinates, which cite, interpret, apply, construe or otherwise enforce Section 131(10) of the New York Social Services Law and/or Part 385.7 of the New York Code of Rules and Regulations.

It is requested that the aforesaid production be made on the 28th day of February, 1974, at 10.00 a.m. at the offices of plaintiff's attorney, The Legal Aid Society of Westchester County, 56 Grand Street, White Plains, New York. It is requested that defendant provide plaintiff with a list or inventory of documents when they are produced, and that plaintiff's attorneys be allowed a reasonable time of at least one week for inspection and photocopying.

THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY

Martin A. Schwartz, Esq.,
Of Counsel
Gerald A. Norlander, Esq.,
Of Counsel
Hilary Sohmer, Esq., Of Counsel
Michael S. Dale, Esq., Of Counsel
Attorneys for Plaintiffs

Defendant's Notice of Motion for Protective Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

PLEASE TAKE NOTICE that on the 8th day of March, 1974 at 2:30 o'clock in the afternoon of that day or as soon thereafter as counsel may be heard defendant, Leonard Berman, will move this court in Room 705 at the United States Court House, Foley Square, New York, New York;

1. For a protective order pursuant to Rule 26(c) of the Federal Rules of Civil Procedure vacating and setting aside interrogatories addressed to defendant Leonard Berman or, in the alternative, for an order extending the time to answer such of said interrogatories as may be required to be answered by the court.

2. For a protective order vacating plaintiff's notice to take the depositions of defendant Leonard Berman, Herbert Ackerman, Stuart D. Rosenthal and Joseph R. Schmitt or, in the alternative, for an order postponing the taking of said depositions, or such of them as the court shall determine should be taken, until after the determination of certain issues which require judicial determination prior to the conduct of any discovery proceedings and for such other and further relief as to the court may seem just and proper.

Dated: February 25, 1974.

s/ HARRY LOTT, Esq.
HARRY LOTT, Esq.
County Attorney
Attorney for Defendant
Leonard Berman

F. Sherwood Alexander, Esq.
Of Counsel

To: Legal Aid Society of Westchester County
56 Grand Street
White Plains, New York 10601

Louis J. Lefkowitz, Esq.
Attorney General for the State of New York

Amy Juviler, Assistant Attorney General
2 World Trade Center
New York, New York

Affidavit of F. Sherwood Alexander in Support of Defendant's Motion for Protective Order.

UNITED STATES DISTRICT COURT

Southern District of New York

[SAME TITLE]

State of New York
County of Westchester } ss.:

F. Sherwood Alexander, being duly sworn, deposes and says:

1. I am a Sr. Assistant County Attorney for the County of Westchester and make this affidavit in support of a motion for a protective order with respect to interrogatories and a notice of depositions of defendant Leonard Berman and others.

2. This action was commenced by the filing of a complaint and the issuance of a summons on or about December 19, 1973, which complaint alleges that the case is a class action for declaratory and injunctive relief and damages.

3. By order to show cause dated January 2, 1974 and supporting affidavit of plaintiff, Robert Milne, sworn to December 28, 1973, an application was made for a temporary restraining order and preliminary injunction. However, this application was withdrawn without prejudice to the rights of the named parties and "members of the purported class of plaintiffs".

4. Subsequent thereto and on January 11, 1974 an amended complaint was served and issue has been joined with respect to defendant Berman by the service of his answer on February 13, 1974.

5. The plaintiff's complaint is based on his allegation that he was denied public assistance by reason of the improper interpretation and application of Section 131(10) of the Social Services Law of New York and of a regulation of the Department of Social Services of New York designated as 18 N.Y. Codes, Rules and Regulations, Section 385.7. Originally Ronald Milne was refused public assistance and subsequent to his application for such assistance, he was afforded assistance and is receiving the same currently.

6. There have been several applications for other individuals to intervene in this action, but the same have not been decided to date.

7. It is the contention of the defendant, Leonard Berman, that no discovery procedure should be permitted until it

has been determined by the court that these individuals be allowed to intervene and that, in fact, a class action may be maintained. Absent such deterimnation, discovery procedure should not be allowed and that any such discovery procedures invoked by plaintiff should be stayed until after it has been ascertained whether or not he has a cause of action.

8. It is contended further on behalf of defendant Leonard Berman that the material sought by both the interrogatories and the notice of depositions and request for production of records, if permitted, would impose an undue burden and expense on said defendant and his department by reason of the fact that it would involve examination of thousands of files by employees of the Westchester County Department of Social Services whose regular work is already on a full-time basis.

WHEREFORE, it is respectfully requested that the interrogatories addressed to the defendant Berman and the notice to take his deposition and that of three other employees of his department be vacated in their entirety or that, in the alternative, all discovery procedures requested by plaintiff be stayed pending determination of the basic issues referred to in this affidavit.

(Sworn to by F. Sherwood Alexander, February 5, 1974.)

Plaintiff's Notice of Motion to Compel Discovery.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

TO THE DEFENDANTS:

PLEASE TAKE NOTICE, that upon the annexed affidavits, the amended complaint and upon the memorandum of points and authorities submitted in support of this motion, plaintiffs will move this Court at a Motion Term, to be held at the United States Courthouse in Room 705, Foley Square, New York, New York on the 8th day of March, 1974, or as soon thereafter as counsel can be heard for an order pursuant to Rule 37 of the Federal Rules of Civil Procedure compelling defendants Lavine and Berman to comply with plaintiffs' notice to take the depositions of defendants Lavine and Berman or their subordinate officers and agents, compelling defendants to produce documents in accord with plaintiffs' notices to both defendants to produce documents, and compelling both defendants to answer plaintiffs' written interrogatories, and for such other and further relief as this Court may deem just and proper.

The grounds of this motion, as are more fully set forth in the plaintiffs' memorandum of points and authorities is that the information and documents sought in plaintiffs' written interrogatories by plaintiffs is matter "which is relevant to the subject matter involved in the pending action" within the meaning of Rule 26 of the Federal Rules of Civil Procedure, and that defendants have refused to

appear for the taking of their depositions without first obtaining an order of protection from this court.

Dated: February 27, 1974, White Plains, New York.

MARTIN A. SCHWARTZ
THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
by: Martin A. Schwartz, of Counsel
Gerald A. Norlander, of Counsel
Attorneys for Plaintiffs

Affidavit of Gerald A. Norlander in Support of Plaintiffs' Motion to Compel Discovery.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

GERALD A. NORLANDER, being duly sworn, deposes and says:

1. I am of counsel to the Legal Aid Society of Westchester County, attorneys for plaintiffs herein, and I am fully familiar with the papers and proceedings in this action.

2. This action was commenced on December 19, 1973 by Ronald Milne, individually and on behalf of all others similarly situated, challenging the constitutionality of New York Social Services Law § 131(10) and a state regulation,

18 N.Y.C.R.R. § 385.7, both on their faces and as applied by the defendants, Abe Lavine and Leonard Berman. Plaintiff seeks to have the challenged law and regulation declared unconstitutional, and theiir operation, enforcement and application by defendants, acting in their official capacities, enjoined. Plaintiff also seeks damages against defendants in their individual capacities for their alleged bad faith denial of plaintiffs' constitutional right to due process of law.

3. Issue has been joined with respect to defendant Berman, his Answer to the Amended Complaint having been served on or about February 13, 1974. Defendant Lavine's time to answer was extended by agreement of counsel to February 20, 1974, but he has not, to date, served any answer.

4. Plaintiff requested, pursuant to Rule 34 of the Federal Rules of Civil Procedure, that Defendant Berman produce certain documents on February 25, 1974. Defendant Berman responded to the request on February 25, 1974, and has refused to provide any of the requested documents. A copy of plaintiff's request for production of documents is annexed hereto as Exhibit "A".

5. The documents described in plaintiff's request and sought to be produced are relevant to the subject matter involved in the pending action. With reference to the numbered paragraphs of plaintiff's notice for production of documents,

(i) The first paragraph describes documents relevant to the operation, enforcement and application of the law and regulation that are the subject matter of this action, (see Amended Complaint, Paragraphs 20-26);

(ii) The second paragraph describes defendant Lavine's "Decisions After Fair Hearings," which are documents directly related to the plaintiff's claims (see Paragraphs 19-26 of the Amended Complaint);

(iii) The third paragraph describes documents directly related to defendants' administration and supervision over the enforcement and application of Section 131(10) of the New York Social Services Law, which is the subject matter of this action, (see Amended Complaint, Paragraphs 20-26);

(iv) The fourth paragraph describes reports related to both the manner in which the challenged statute and regulation are applied, and the number of persons affected by such application, (see Amended Complaint, Paragraphs 6-8, 20-26);

(v) The fifth paragraph particularly describes forms and reports that are both related to the application of the challenged law and related to the numbers of persons sanctioned under the law by defendant Berman. Blank forms and copies of the most recently completed forms are requested. Such documents are related to the plaintiff's claims, (see Amended Complaint, Paragraphs 6-8, 20-26);

(vii) The sixth paragraph describes documents and papers prepared in connection with plaintiff Ronald Milne's application for public assistance, which are relevant to the main claims in this action, (see Amended Complaint, Paragraphs 1-2, 6-8, 11-26).

6. Plaintiff propounded nine interrogatories to defendant Berman, pursuant to Rule 33 of the Federal Rules of Civil Procedure, dated and served on or about January 24, 1974. Defendant Berman has refused to answer the

interrogatories, and he moved for a protective order on February 25, 1974. A copy of plaintiff's interrogatories to defendant is annexed hereto as Exhibit "B".

7. The nine interrogatories that have been propounded to defendant Berman are relevant to the subject matter of the action. With reference to plainitff's numbered interrogatories, portions of plaintiff's amended complaint that are relevant to each interrogatory are set forth as follows:

(i) The first interrogaory seeks information concerning the number of persons affected by defendants application of the law and regulation challenged in this action (see Amended Complaint, Paragraphs 1, 2, 6-8, 20-26).

(ii) The second interrogatory seeks information concerning data compilations and records from which information concerning both the number of persons affected by the challenged law and regulation and the manner of defendant Berman's application of the law could be ascertained; such information is related to plaintiff's claims (see Amended Complaint, 1, 2, 6-8, 20-26);

(iii) The third interrogatory seeks information concerning defendants' administrative procedure and policies that are challenged in this action, and information concerning denial of plaintiff's application for Home Relief is sought (see Amended Complaint, Paragraphs 20-26);

(iv) The fourth interrogatory seeks information concerning defendants' official interpretations and policies concerning the application of the law and regulation that are the subject matter of this litigation (see Amended Complaint, Paragraphs 1, 2, 20-26);

(v) The fifth interrogatory seeks information concerning the "Fair Hearing Decisions" in which defendant

Berman's application of the challenged law has been reviewed by defendant Lavine, which is relevant to plaintiff's claims (see Amended Complaint, Paragraphs 1, 2, 19-26);

(vi) The sixth interrogatory seeks information concerning defendants' administrative regulations, rules and procedures for application of the challenged law and regulation (see Amended Complaint, Paragraphs 20-26);

(vii) The seventh interrogatory concerns actions taken by defendants after "Decision After Fair Hearings" in order to modify, correct or clarify application of the challenged law and regulation (see Amended Complaint, paragraphs 20-26);

(viii) The eighth interrogatory concerns defendants' reports and other official documents related to their application of the law and regulation, and the number of persons affected by such application, that are the subject matter of this litigation (see Amended Complaint 1, 2, 6-8, 20-26);

(ix) The ninth interrogatory seeks information concerning the defendants denial of Home Relief to plaintiff Milne, and the persons involved in such denial, and is related to plaintiff's claim that the denial of assistance was in violation of his constitutional rights (see Amended Complaint, Paragraphs 1, 2, 11-26).

8. Plaintiff propounded five interrogatories to defendant Lavine, dated and served on January 22, 1974:

(i) The first interrogatory relates to the numbers of persons sanctioned under the law and regulation challenged in this action;

(ii) The second interrogatory relates to defendants' administrative rules and interpretations concerning the challenged law and regulation;

(iii) The third interrogatory relates to "Decisions After Fair Hearings" rendered by defendant Lavine which review the application of the challenged law and regulation;

(iv) The fourth interrogatory concerns the average time lapse between requests for hearings made by persons sanctioned by defendants under the challenged law and regulation, and the date of a decision of defendant Lavine;

(v) The fifth interrogatory concerns the provision of emergency aid to persons sanctioned under color of the challenged law and regulation.

A copy of the interrogatories is annexed hereto as Exhibit "C". The interrogatories are material to the subject matter of this action, (see Amended Complaint, Paragraphs 1, 2, 6-8, 11-26).

9. Defendant Lavine did not answer or respond to the interrogatories within 30 days of their service.

10. On or about January 22, 1974, plaintiff notified defendants that "plaintiffs will take the depositions of the defendant Commissioner of the New York State Department of Social Services and the defendant Commissioner of the Westchester County Department of Social Services, or their subordinate officers and agents . . . [Herbert Ackerman, Stuart D. Rosenthal, Joseph R. Schmitt] . . . by oral examination . . ." on February 15, 1974. The notice also required production by defendants of particular documents related to the subject matter of this action. A copy of the notice of depositions is annexed hereto as Exhibit "D".

11. Counsel to the parties agreed to adjourn the deposition until February 26, 1974, confirmed by a letter dated February 14, 1974 from plaintiff's counsel to counsel for defendant Lavine.

12. At about 4:50 P.M. on the afternoon of February 25, 1974, Sherwood Alexander, Esq., one of defendant Berman's attorneys, informed me that defendants would not appear at the scheduled deposition.

13. On February 26, 1974, neither defendants nor their agents designated as acceptable substitutes appeared for the scheduled deposition. Defendants did not obtain any prior protective order of this Court to excuse their absences.

14. Pursuant to Rule 9(f) of the General Rules of this Court, I have conferred with counsel for defendant Berman in an effort in good faith to resolve by agreement the issues raised by this motion to compel discovery without the intervention of the court, and have been unable to reach such an agreement. On February 25, 1974, my suggestion that defendants' depositions be taken within a week was rejected by Peter Davidson, Esq., attorney for defendant Berman. I asked Mr. Davidson, on February 26, 1974, to ascertain whether any of the answers to interrogatories, or documents sought by plaintiff might be provided voluntarily by defendant Berman, and he has not, to date supplied any such information or promised that any information or documents would be forthcoming. I have diligently attempted to contact Amy Juviler, Esq., concerning defendant Lavine's failures to appear at the scheduled deposition, his failure to respond to interrogatories, and his failure to produce documents as requested, but my calls have been unreturned.

WHEREFORE, deponent respectfully requests that this Court enter an order:

(A) granting plaintiff's motion to compel discovery in its entirety,

(B) denying defendants motion for a protective motion in its entirety,

(C) granting plaintiffs their costs and reasonable attorneys fees pursuant to Rule 37 of The Federal Rules of Civil Procedure, and for such other and further relief as to this Court may deem just and proper.

(Sworn to by Gerald A. Norlander, February 26, 1974.)

Supplementary Affidavit of Gerald A. Norlander in Support of Motion to Compel Discovery.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

GERALD A. NORLANDER, being duly sworn, deposes and says:

1. I am of counsel to the Legal Aid Society of Westchester County, attorneys for plaintiffs herein, and I am fully familiar with all the papers and proceedings herein. I make this affidavit in further support of plaintiffs' motion to compel discovery, and in support of plaintiffs' request pursuant to Rule 37(a)(4) for attorneys fees.

Supplementary Affidavit of Gerald A. Norlander.

2. Plaintiff requested on January 22, 1974 that defendant Lavine produce certain documents on February 28, 1974. The documents requested are material to the subject matter of this action. The request is annexed hereto as Exhibit "E".

3. Defendant Lavine failed to produce any of the documents at the time requested. Defendant Lavine made no response whatsoever to plaintiff's notice to production of documents, and his counsel has failed to return my telephone calls or to inform me of any reason why defendant Lavine has refused to comply with the plaintiffs' request.

4. I have spent approximately four hours preparing my affidavits in support of plaintiffs' motion to compel discovery.

WHEREFORE, I respectfully request that plaintiffs' motion be granted in its entirety and that plaintiffs be awarded reasonable attorneys' fees pursuant to Rule 37 (a)(4).

(Sworn to by Gerald A. Norlander, February 28, 1974.)

Order Authorizing Discovery.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all persons similarly situated,

Plaintiffs,

v.

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and

ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants.

This is a motion by "plaintiffs" (but at this point there seems to be only one plaintiff, Milne) for an order requiring defendants to respond to certain discovery notices and requests. Fed. R. Civ. P. 37.

This is an action for relief against New York Social Services Law § 131(10) on the ground that the cited section is unconstitutional. A three judge court has been convened. 28 U.S.C. § 2294. Circuit Judge Oakes, District Judge Bonsal and I comprise the three judge court. The three judge court has asked me to decide this pending motion.

As to the request for production of documents by defendant Berman: no response need be made to items 1, 2 and 3; a response will be made to item 4, limited to denials

of public assistance resulting from application of Section 131(10); a response will be made to item 5, limited to statistical data compiled in respect of denials of public assistance resulting from application of Section 131(10).

As to the request for production of documents by defendant Lavine: a response will be made to item 1; no response need be made to items 2, 3, or 4.

As to the first interrogatories to defendant Berman: interrogatories 1 and 2 will be answered; the other interrogatories need not be answered.

As to the first interrogatories to defendant Lavine; interrogatories 1 and 5 will be answered; the other interrogatories need not be answered.

As to the notice to take depositions: the depositions will not be taken.

The rulings now made are without prejudice to a renewal by plaintiff of the notices and requests at some later stage in this action.

The discovery authorized hereunder will be completed on or prior to April 12, 1974.

So Ordered.

Dated: March 8, 1974.

Inzer B. Wyatt
United States District Judge

Answer of Defendant Lavine.

UNITED STATES DISTRICT COURT

Southern District of New York

[SAME TITLE]

The defendant Abe Lavine, individually and as Commissioner of the New York State Department of Social Services, for his answer to the complaint, alleges:

First Defense

1. Denies that this action arises under the Constitution or statutes of the United States and denies that there has been any deprivation or threatened deprivation under color of any statute, ordinance, regulation, custom or usage of the State of New York of any rights, privileges or immunities secured to the plaintiff or others similarly situated, by the Constitution or statutes of the United States.

2. The complaint fails to state a claim upon which relief can be granted.

Second Defense

3. New York Social Services Law § 131(10) provides:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation.

Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

4. Section 131(10) is a reasonable statute limiting eligibility for public assistance for 75 days after an applicant voluntarily leaves his employment in some instances and when not in conflict with federal law or regulation.

5. It is reasonable to require a person to provide for himself for the period immediately following his voluntarily leaving employment unless he can prove that he did not do so in contemplation of relying on public assistance.

THIRD DEFENSE

6. The regulation of the State Department of Social Services (18 NYCRR § 385.7) insofar as applicable to plaintiff provides:

"(a) . . . (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily

terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

7. The regulation (¶ 6 *supra*) effectuates the same reasonable policy as the statute and is similarly in conformity with the Constitution of the United States.

FOURTH DEFENSE

8. Plaintiff applied for public assistance in the form of Home Relief (Social Services Law § 157, *et seq.*) which by definition (Social Services Law § 158) means that he is not entitled to categorical assistance under any of the federally-aided programs.

9. Home Relief recipients are supported solely by State and local appropriations.

10. Home Relief is a program totally dependent on State law.

11. The State Legislature has the right to define eligibility for State supported Home Relief.

FIFTH DEFENSE

12. Defendant Lavine has not determined that plaintiff Milne is ineligible for public assistance for 75 days by operation of Social Services Law § 131(10).

13. State regulation (18 NYCRR Part 358) provides a "fair hearing" system by which an applicant denied assistance by local Social Services officials may ask defendant Lavine and/or his employees and agents to grant assistance.

14. Until the procedure referred to in ¶ 12 has been followed, plaintiff's complaint against defendant Lavine with regard to the enforcement of Social Services Law § 131(10) and 18 NYCRR § 385.7 is premature.

SIXTH DEFENSE

15. Upon information and belief, plaintiff Milne's application for assistance was reconsidered and he was found not to be ineligible under Social Services Law § 131(10).

16. The complaint is moot.

SEVENTH DEFENSE

17. Upon information and belief, plaintiff Milne requested a hearing on December 13, 1973 and one was scheduled for January 9, 1974.

18. Because of the many applications for fair hearings by applicants for public assistance, it is impossible for the defendant to hold hearings immediately upon request.

19. Most applicants for public assistance claim that they are presently destitute so the plaintiff has no right to be considered out of turn.

20. The scheduling of fair hearings was altogether reasonable and did not deprive plaintiff Milne of any Constitutional rights.

EIGHTH DEFENSE

21. The permanent injunction issued by this Court in *William Nelson, et al.* v. *Sugarman, et al.*, [71 Civ. 1719 (CBM)] on December 11, 1973 which requires the rendering of a fair hearing within 90 days of the initiation of the proceeding is binding upon defendant Lavine.

NINTH DEFENSE

23. The damages sought against defendant Lavine constitute a suit against the State as prohibited by the Eleventh Amendment.

24. No actions of defendant Lavine are alleged to violate the Law of New York.

25. There are no allegations that defendant Lavine acted with malice against the plaintiff.

TENTH DEFENSE

26. Plaintiff claims that he did not voluntarily terminate his employment and thus that Social Services Law § 131(10) was wrongly applied to him.

27. Plaintiff cannot represent persons who voluntarily terminated their employment since he is allegedly not a member of that class.

28. Plaintiff and the proposed intervenor all reside in Westchester County and claim to have been denied assistance by defendant Berman, his agents or employees; so that plaintiff cannot represent persons in other districts.

29. The application of Social Services Law § 131(10) must be made on an individual basis depending on the facts of each case.

30. This complaint is inappropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Answer of Defendant Lavine.

ELEVENTH DEFENSE

31. Deny that plaintiff has raised a substantial question of violation of his rights under the Fourteenth Amendment to the United States Constitution.

32. Deny that this is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284.

TWELFTH DEFENSE

33. Plaintiffs wholly fail to state a claim for relief under 42 U.S.C. 1983 and its jurisdictional mate 28 U.S.C. 1343.

THIRTEENTH DEFENSE

34. Admits the allegations contained in paragraphs "9", "10", "15", "16" and "17" of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "2", "5", "6", "11", "12", "13", "14", "18" and "23" of the complaint; and denies each and every other allegation contained in the complaint except admits that a fair hearing for plaintiff was scheduled for January 9, 1974 as alleged in paragraph "19".

WHEREFORE, the complaint should be dismissed.

Dated: New York, New York
March 8, 1974

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine
By

AMY JUVILER
Assistant Attorney General

Answer of Defendant Berman.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, Leonard Berman, Commissioner of the Department of Social Services of the County of Westchester, by his attorney Harry Lott, County Attorney of the County of Westchester, alleges as his answer:

1. Defendant denies the allegation in Paragraph "I" "1." of the complaint, that the action is authorized by 42 USC Section 1983, and further denies that the application of NY Social Services Law, Section 131 (10) and NYS Department of Social Services Regulation 18 NYC R.R. Section 385.7 as enforced and applied by the Defendant are in violation of plaintiff's rights secured by the due process and equal protection clauses of the 14th Amendment to the U.S. Constitution.

2. Defendant denies the allegation in Paragraph "I" "2." of the complaint.

3. Defendant denies the allegations in Paragraph "II" "3." of the complaint that jurisdiction is conferred on this court by 28 U.S.C. 1343(3).

4. Defendant denies any allegation which may be claimed by inference in Paragraph "III" "4." of the complaint that jurisdiction is properly conferred on this court.

5. Defendant denies the allegations of Paragraph "V" "6., 7., and 8." of the complaint that this is a proper class action.

6. Defendant lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph "VII" "11." of the complaint.

7. Defendant lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph "VII" "12." of the complaint, except admits that Plaintiff Milne applied for public assistance on November 16, 1973.

8. Defendant denies the allegations in Paragraph "VII" "14." of the complaint.

9. Defendant lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph "VII" "18." of the complaint.

10. Defendant denies the allegations in Paragraph "VII" "19." of the complaint insofar as it is alleged that Plaintiff was effectively deprived of the opportunity for any relief before expiration of the 75 days during which he was disqualified for public assistance and with respect to the other allegations of said paragraph. Defendant lacks knowledge or information sufficient to form a belief.

11. Defendant denies the allegations in Paragraph "VII" "20., 21., 22., and 23." of the complaint.

12. Defendant denies the allegations in Paragraph "VIII" "24., 25., and 26." of the complaint.

Wherefore, Defendant respectfully prays that the complaint in this matter be dismissed and for such other and further relief as to the court seems proper.

s/ Harry Lott
by Peter F. Davidson
Harry Lott, County Attorney
for the County of Westchester
Attorney for Defendant Berman

Dated: February 13, 1974

Order to Show Cause for Order Granting Intervention And Temporary Restraining Order on Behalf of Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly.

UNITED STATES DISTRICT COURT

Southern District of New York

[SAME TITLE]

Upon the Affidavit of Joe Nathan Beverly, the Affidavit of Odell Beverly and John Beverly, the Affidavits of Willie Beverly and Doug Berky, and the Certificate of one of the attorneys for intervenor-plaintiffs attached hereto, the Amended Complaint in this action, and upon the proposed intervenors' complaint it is

Order to Show Cause for Order Granting Intervention And Temporary Restraining Order on Behalf of Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly.

ORDERED, that defendants and proposed defendant George E. Boisvert show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 705, on the 22nd day of March, 1974, at 2:30 P.M. or as soon thereafter as counsel can be heard, why an order should not be made herein, granting the motion of proposed intervenor-plaintiffs Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly

(a) Pursuant to Rules 23 and 24(b) of the Federal Rules of Civil Procedure, to intervene in this action as named parties plaintiff;

(b) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining defendants and George E. Boisvert, their agents and successors from sanctioning Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly under color of Section 131(10) of the New York Social Services Law and/or 18 NYCRR Sect. 385.7, and enjoining defendants, and proposed defendant George E. Boisvert from denying temporary assistance for food and shelter under color of the aforesaid law and regulation, pending a final determination of this action, waiving the security requirement of Rule 65(c).

(c) Pursuant to Rules 19(a), 20(a) and 21 of the Federal Rules of Civil Procedure for an order adding George E. Boisvert, individually and in his capacity as Commissioner of the Ontario County Department of Social Services, as a party defendant.

Order to Show Cause for Order Granting Intervention And Temporary Restraining Order on Behalf of Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly.

The grounds for the motion are that it is appropriate for Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, members of the alleged class of plaintiffs in the main action, to intervene at this early stage of the proceedings, since the facts of their cases, the legal claims they make, and their claims for relief are all substantially identical to those of Ronald Milne. Further, Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly are in dire need of immediate individual relief from a sanction imposed upon them by defendants and proposed defendant George E. Boisvert under the law and regulation challenged in the main action. Because Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly are utterly destitute, waiver of security requirements should be granted.

ORDERED that this Order to Show Cause, together with the papers upon which it is granted be served personally upon the attorneys for defendants and upon proposed defendant George E. Boisvert, on or before the 18th day of March, 1974; at 5:00 P.M.

Dated: New York, New York
March 15, 1974
at 2:40 P.M.

s/ INZER B. WYATT
United States District Judge

Affidavit of Joe Nathan Beverly in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF STEUBEN } ss.:

JOE NATHAN BEVERLY, being duly sworn deposes and says:

1. I am an adult citizen of the United States, an applicant for intervention herein and temporarily reside at 60 South Main Street in the City of Canandaigua, Ontario County, New York. I am 23 years of age.

2. Until on or about January 11, 1974, I was employed as a farmworker for $2.00 per hour by Emerson Poultry Farm, R.D. #1, Middlesex, Yates County, New York with my three brothers, Willie Beverly, Odell Beverly and John Beverly.

3. During the time we worked at Emerson Poultry Farm we lived with a sister in the Town of Middlesex a couple of miles from the farm. Our employer provided transportation to and from work.

4. Upon information and belief, on or about January 10, 1974 my sister was served an eviction notice from the Justice Court of the Town of Middlesex. I had known that an eviction was imminent because my sister had received a previous warning because she was behind in her rent.

Affidavit of Joe Nathan Beverly.

5. We searched for new quarters in the Middlesex vicinity but were unable to find an apartment in that rural area.

6. We had to move immediately and we moved about four miles to Gorham where my sister rented a house. We stayed there for about a week until her new landlord said he wanted us out because he had rented to only one family. We then moved to my mother's apartment about 18 miles away in Geneva, Ontario County, New York where we stayed for 3 of 4 days. We had to leave there because she only has two rooms and could not afford to support us.

7. As a result of the forced move, we had to quit our jobs at Emerson Poultry Farm for lack of transportation. There is no public transportation between Geneva and Canandaigua and Middlesex and neither my brothers nor I has a drivers license. The distance was too far for our employer to take us to and from work every day.

8. After leaving my mother's house we went to Canandaigua about 15 miles from Middlesex, where we stayed with another sister, Irene Curry, her husband, and child at 109 Clark Street and then in a two bedroom apartment at 106 Bristal Street. We remained there until on or about Feburary 6, 1974 when we had to leave because of the overcrowding and objections from our sister's landlord and because our sister could not afford to feed us all.

9. On arrival in Canandaigua we had to live off the charity of our sister while we tried to find jobs.

10. After failing to find employment in or around the City of Canandaigua, I went with my brother Odell Beverly and John Beverly to the office of the Ontario County Department of Social Services to apply for public assistance under the home relief program. We explained that

we were without funds and how we ended up in Canandaigua. All three applications were denied orally on the same date. No reason for the denial was given and no written notice of denial was provided at that time. I was told to return on Tuesday, January 29, 1974 and my two brothers on January 30 and 31.

11. On January 29, 1974 I returned once again to the Ontario County Department of Social Services and once again was turned down without written notice. As a result of my experience my two brothers did not return on January 30 and 31.

12. On or about February 6, 1974 my brothers Odell Beverly and John Beverly and myself moved to the apartment of some friends, Mr. & Mrs. Gary Morehouse of 60 South Main Street in the City of Canandaigua, where we remain to the present time. We were rejoined at that address by our brother Willie Beverly. The Morehouses are public assistance recipients and have been unable to provide us with any food on their meager budget. In order to eat, we had to rely on a food grant provided by the St. Vincent de Paul Society.

13. On February 20, 1974 we returned to the Ontario County Department of Social Services to reapply for public assistance. This time I was accompanied by my brothers Willie Beverly, Odell Beverly and John Beverly and by Doug Berky, a VISTA Volunteer associated with Project Reach of Cohocton, New York. Once again we explained that we were destitute and once again we were denied assistance without written notice of denial.

14. On February 22, 1974 we again went to the Ontario County Department of Social Services with Doug Berky.

This time we were given food stamps, but we were still denied any public assistance benefits.

15. Except for the period from on or about February 22, 1974 to on or about February 28, 1974 when I was employed by a janitorial service in the City of Canandaigua, I have been unable to find employment. Upon information and belief my brothers have had no employment whatsoever.

16. We must leave our present temporary quarters since the friends with whom we are staying will need the space when their new child is born. The child is expected in a matter of days.

17. After the denial of assistance, Doug Berky, the VISTA Volunteer from Project Reach, helped my brothers and I get a loan from Program Funding, Inc. of Rochester for $200. The loan was obtained to enable us to find housing and is explicitly restricted to that purpose.

18. I have no resources other than the restricted loan from Program Funding, Inc. and the food stamps we receive from the Ontario County Department of Social Services.

19. I believe that I was denied Home Relief under color of Section 131(10) of the New York Social Services Law, because that section provides for the 75 day disqualification for public assistance that was referred to by the persons who denied my application for assistance.

20. I believe that the denial of temporary or emergency assistance to me under color of Section 131(10) of the New York Social Services Law, without giving me a fair chance to show that I did not voluntarily quit my job in

order to get welfare, was arbitrary and a denial of due process of law and equal protection of the law that are promised and guaranteed to me under the Fourteenth Amendment to the United States Constitution.

21. I believe that George E. Boisvert, the Commissioner of the Ontario County Department of Social Services, has authorized or tolerated a policy of his department to absolutely deny every application for Home Relief made by a person who applies for assistance within 75 days after leaving or being discharged from employment. I believe that the persons who denied my application were acting under instructions of George E. Boisvert or persons acting with his approval. Such instructions have not been made public as is required by law, and I believe that I have suffered grievous injury and damage as a result of defendant Boisvert's policy.

22. I believe that the failure of defendants to grant my applications for public assistance under color of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. Sect. 385.7 and the failure to give me an opportunity for a prompt hearing where I might attempt to overcome the presumption that I volutarily left my job for the purpose of qualifying for public assistance constitute a violation of my rights under the United States Constitution.

23. I believe that the facts set forth in this affidavit and my claims set forth in the proposed intervenors' complaint are substantially identical to the claims and facts in the Amended Complaint of Ronald Milne in the above captioned action, and I believe that this Court should therefore grant me leave to intervene in the main action as a named plaintiff on behalf of myself and all others similarly situated.

24. I believe that this court should grant a temporary restraining order to prevent respondents from causing further irreparable damage to me under color of Section 131(10) of the New York Social Services Law pending a hearing on my motion for a preliminary injunction.

25. I believe that the security requirement of Rule 65 of the Federal Rules of Civil Procedure should be waived because I am utterly destitute, because of any and all public assistance paid to me by the Department of Social Services is subject to recovery under New York Social Services Law Sections 101-110, and because the amount of any such assistance is insignificant in comparison to the harm that I am suffering.

26. I am proceeding by Order to Show Cause rather than by Notice of Motion due to the extreme emergency and irreparable damage that I am suffering.

27. I make this affidavit in support of my motion to intervene as a representative party plaintiff in the above captioned action and in support of my motion for a preliminary injunction.

28. I have no previous application to any court for the relief sought herein.

WHEREFORE, I respectfully pray that my motion be granted in all respects.

(Sworn to by Joe Nathan Beverly, March 11, 1974.)

Affidavit of Willie Beverly in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF STEUBEN } ss.:

WILLIE BEVERLY, being duly sworn, deposes and says:

1. I am a citizen of the United States, an applicant for intervention herein and temporarily reside at 60 South Main Street in the City of Canandaigua, Ontario County, New York. I am 20 years of age and bring this suit by my natural mother and next friend Roberta Beverly.

2. Until on or about January 11, 1974, I was employed as a farmworker for $2.00 per hour by Emerson Poultry Farm, R.D. #1, Middlesex, Yates County, New York, with my three brothers, Joe Nathan Beverly, Odell Beverly and John Beverly.

3. During the time we worked at Emerson Poultry Farm we lived with a sister in the Town of Middlesex a couple of miles from the farm. Our employer provided transportation to and from work.

4. Upon information and belief, on or about January 10, 1974 my sister was served with an eviction notice from the Justice Court of the Town of Middlesex. I had known that an eviction was imminent because my sister had received a previous warning because she was behind in her rent.

5. We searched for new quarters in the Middlesex vicinity but were unable to find an apartment in that rural area.

6. We had to move immediately and we moved about four miles to Gorham where my sister rented a house. We stayed there for about a week until her new landlord said he wanted us out because he had rented to only one family. We then moved to my mother's apartment about 18 miles away in Geneva, Ontario County, New York where we stayed for 3 or 4 days. We had to leave there because she only has two rooms and could not afford to support us.

7. As a result of the forced move I was obliged to quit my job at Emerson Poultry Farm for lack of transportation. There is no public transportation between Geneva and Middlesex and I do not have a drivers license. The distance was too far for the employer to transport me to and from work on every day.

8. After leaving my mother's house I stayed with a friend in Geneva for a couple of weeks. On arrival in Geneva I tried to find a job, but had no success. I remained in Geneva until some time in February when I rejoined my three brothers at the apartment of Mr. & Mrs. Gary Morehouse at 60 South Main Street in the City of Canandaigua. I remain there to this day, although on a temporary basis.

9. On February 20, 1974 I went with my brothers, Joe Nathan Beverly, Odell Beverly and John Beverly to the Ontario County Department of Social Services to apply for public assistance. We were accompanied by Doug Berky, a VISTA Volunteer associated with Project Reach of Cohocton, New York. We explained that we were destitute but nevertheless were denied assistance without written notice of denial.

10. On February 22, 1974 we again went to the Ontario County Department of Social Services with Doug Berky. This time we were given food stamps, but were still denied any public assistance benefits.

11. Since my arrival in Ontario County I have been unable to find employment.

12. We must leave our present temporary quarters since the friends with whom we are staying will need the space when their new child is born. The child is expected in a matter of days.

13. After the denial of assistance Mr. Doug Berky, helped my brother and I obtain a loan from Program Funding, Inc. of Rochester for $200. The loan was obtained to enable us to find housing and is explicitly restricted to that purpose.

14. I have no resources other than the restricted loan from Program Funding, Inc. and the food stamps we receive from the Ontario County Department of Social Services.

15. I believe that I was denied Home Relief under color of Section 131(10) of the New York Social Services Law, because that section provides for the 75 days disqualification for public assistance that was referred to by the persons who denied my application for assistance.

16. I believe that the denial of temporary or emergency assistance to me under color of Section 131(10) of the New York Social Services Law, without giving me a fair chance to show that I did not voluntarily quit my job in order to get welfare, was arbitrary and a denial of due

process of law and equal protection of the law that are promised and guaranteed to me under the Fourteenth Amendment to the United States Constitution.

17. I believe that George E. Boisvert, the Commissioner of the Ontario County Department of Social Services, has authorized or tolerated a policy of his department to absolutely deny every application for Home Relief made by a person who applies for assistance within 75 days after leaving or being discharged from employment. I believe that the persons who denied my application were acting under instruction of George E. Boisvert or persons acting with his approval. Such instructions have not been made public as is required by law, and I believe that I have suffered grievous injury and damage as a result of defendant Boisvert's policy.

18. I believe that the failure of defendants to grant my application for public assistance under color of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. Sect. 385.7 and the failure to give me an opportunity for a prompt hearing where I might attempt to overcome the presumption that I voluntarily left my job for the purpose of qualifying for public assistance constitute a violation of my rights under the United States Constitution.

19. I believe that the facts set forth in this affidavit and my claims set forth in the proposed intervenors' complaint are substantially identical to the claims and facts in the Amended Complaint of Ronald Milne in the above captioned action, and I believe that this Court should therefore grant me leave to intervene in the main action as a named plaintiff on behalf of myself and all others similarly situated.

20. I believe that this court should grant a temporary restraining order to prevent respondents from causing further irreparable damage to me under color of Section 131(10) of the New York Social Services Law pending a hearing on my motion for a preliminary injunction.

21. I believe that the security requirement of Rule 65 of the Federal Rules of Civil Procedure should be waived because I am utterly destitute, because any and all public assistance paid to me by the Department of Social Services in subject to recovery under New York Social Services Law Sections 101-110, and because the amount of any such assistance is insignificant in comparison to the harm that I am suffering.

22. I am proceeding by Order to Show Cause rather than by Notice of Motion due to the extreme emergency and irreparable damage that I am suffering.

23. I make this affidavit in support of my motion to intervene as a representative party plaintiff in the above captioned action and in support of my motion for a preliminary injunction.

24. I have made no previous application to any court for the relief sought herein.

WHEREFORE, I respectfully pray that my motion be granted in all respects.

(Sworn to by Willie Beverly, March 11, 1974.)

Affidavit of Odell Beverly and John Beverly in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF STEUBEN } ss.:

ODELL BEVERLY and JOHN BEVERLY, being duly sworn depose and say:

1. We are citizens of the United States and temporarily reside at 60 South Main Street in the City of Canandaigua, Ontario County, New York. We are 18 and 17 years of age respectively and bring this suit by our natural mother and next friend Roberta Beverly.

2. Until on or about January 11, 1974 we were employed as farmworkers for $2.00 per hour by Emerson Poultry Farm, R.D.1, Middlesex, Yates County, New York.

3. During the time we worked at Emerson Poultry Farm we lived with our sister and her family and two of our brothers, Joe Nathan Beverly and Willie Beverly in the Town of Middlesex a couple of miles from the farm. Our employer provided transportation to and from work.

4. Upon information and belief, on or about January 10, 1974 our sister received an eviction notice from the Justice Court of the Town of Middlesex. A copy of the petition is annexed hereto as Exhibit "A". We knew that we were going to be evicted because our sister had received a previous warning about being behind in her rent.

5. We searched for new quarters in the Middlesex vicinity but were unable to find an apartment in that rural area. It was especially hard because we are black and there are very few black people in that area.

6. We had to move immediately and we moved approximately four miles to Gorham where our sister rented another house. We stayed there for about a week until her new landlord said he wanted us out because he had rented to only one family. We then moved to our mother's apartment about 18 miles away in Geneva, Ontario County, New York where we stayed for 3 or 4 days. We had to leave there because she only has two rooms and could not afford to support us.

7. As a result of the forced move, we had to quit our jobs at Emerson Poultry Farm for lack of transportation. There is no public transportation between Geneva or Canandaigua and Middlesex and neither of us nor our brothers has a drivers license. The distance was too far for our employer to take us to and from work every day.

8. After leaving our mother's house we went to Canandaigua, about 15 miles from Middlesex where we stayed with another sister, Irene Curry, her husband and child at 109 Clark Street and then in a two bedroom apartment at 106 Bristal Street. We remained there until on or about February 6, 1974 when we had to leave because of the overcrowding and objections from our sister's landlord and because our sister could not afford to feed us all.

9. On arrival in Canandaigua, we had to live off the charity of our sister while we tried to find a job.

10. After failing to find employment in or around the City of Canandaigua, we went with our brother Joe Nathan

Beverly to the office of the Ontario County Department of Social Services to apply for public assistance under the home relief program. We explained that we were without funds and how we ended up in Canandiagua. All three applications were denied orally on the same date. No reason for the denial was given and no written notice of denial was provided at that time. We were told to return on January 30 and 31 while our brother Joe Nathan Beverly was told to return on Tuesday, January 29, 1974.

11. On information and belief on January 29, 1974 our brother Joe Nathan Beverly returned once again to the Ontario County Department of Social Services and once again was turned down without written notice. Since we knew we still would not get any help we did not return on January 30 and 31.

12. On or about February 6, 1974 we moved to the apartment of some friends, Mr. and Mrs. Gary Morehouse of 60 South Main Street in the City of Canandaigua, where we remain to the present time. We were rejoined at that address by our brother Willie Beverly. The Morehouses are public assistance recipients and have been unable to give us any food on their meager budget. In order to eat we had to rely on a food grant provided by the St. Vincent de Paul Society.

13. On February 20, 1974 we returned to the Ontario County Department of Social Services to reapply for public assistance. This time we were accompanied by our brothers Joe Nathan Beverly and Willie Beverly and by Doug Berky, a Vista Volunteer associated with Project Reach of Cohocton, New York. Once again we explained that we were destitute and once again we were denied assistance without written notice of denial.

14. On February 22, 1974 we again went to the Ontario County Department of Social Services with Doug Berky. This time we were given food stamps, but we were still denied any public assistance.

15. Since our arrival in Canandaigua we have been unable to find employment.

16. We must leave our present temporary quarters since the friend with whom we are staying will need the space when their new child is born. The child is expected in a matter of days.

17. After the denial of assistance Mr. Doug Berky helped us and our brothers Joe Nathan Beverly and Willie Beverly get a loan from Program Funding, Inc. of Rochester for $200.00. The loan was obtained to enable us to find housing and is explicitly restricted to that purpose.

18. We have no resources other than the restricted loan from Program Funding, Inc. and the food stamps we receive from the Ontario County Department of Social Services.

19. We believe that we were denied Home Relief under color of Section 131(10) of the New York Social Services Law, because that section provides for the 75 day disqualification for public assistance that we were told was the reason for the denial of our application for assistance.

20. We believe that the denial of temporary or emergency assistance to us under color of Section 131(10) of the New York Social Services Law, without giving us a fair chance to show that we did not voluntarily quit our job in order to get welfare, was arbitrary and a denial of

due process of law and equal protection of the law that are promised and guaranteed to us under the Fourteenth Amendment to the United States Constitution.

21. We believe that George E. Boisvert, the Commissioner of Ontario County Department of Social Services, has authorized or tolerated a policy of his department to absolutely deny every application for Home Relief made by a person who applies for assistance within 75 days after leaving or being discharged from employment. We believe that the persons who denied our application were acting under instructions of George E. Boisvert or persons acting with his approval. Such instructions have not been made public as is required by law, and we believe that we have suffered grievous injury and damage as a result of defendant Boisvert's policy.

22. We believe that the failure of defendants to grant our application for public assistance under color of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. Sect. 385.7 and the failure to give us an opportunity for a prompt hearing where we might attempt to overcome the presumption that we voluntarily left our jobs for the purpose of qualifying for public assistance constitute a violation of our rights under the United States Constitution.

23. We believe that the facts set forth in this affidavit and our claims set forth in our proposed intervenors complaint are substantially identical to the claims and facts in the Amended Complaint of Ronald Milne in the above captioned action, and we believe that this Court should therefore grant us leave to intervene in the main action as named plaintiffs on behalf of ourselves and all others similarly situated.

24. We believe that this court should grant a temporary restraining order to prevent respondents from causing further irreparable damage to us under color of Section 131(10) of the New York Social Services Law pending a hearing on our motion for a preliminary injunction.

25. We believe that the security requirement of Rule 65 of the Federal Rules of Civil Procedure should be waived because we are utterly destitute, because any and all public assistance paid to us by the Department of Social Services is subject to recovery under New York Social Services Law Sections 101-110, and because the amount of any such assistance is insignificant in comparison to the harm that we are suffering.

26. We are proceeding by Order to Show Cause rather than by Notice of Motion due to the extreme emergency and irreparable damage that we are suffering.

27. We make this affidavit in support of our motion to intervene as representative parties plaintiff in the above captioned action and in support of our motion for a preliminary injunction.

28. We have made no previous application to any court for the relief sought herein.

WHEREFORE, we respectfully pray that our motion be granted in all respects.

(Sworn to by Odell Beverly and John Beverly,
March 11, 1974.)

Affidavit of Gerald A. Norlander in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

GERALD A. NORLANDER, being duly sworn, deposes and says that:

FIRST: I am an attorney associated with The Legal Aid Society of Westchester County, attorneys for plaintiff Ronald Milne, intervenor-plaintiffs Douglas Streeter and Robert C. Lee, and the intended plaintiff class in this action.

SECOND: On March 12, 1974, I was authorized to make application to this Court for a temporary restraining order and an order to show cause for intervention in this action on behalf of Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly, by their attorney, Gerald A. McIntyre, Esq., who is associated with Monroe County Legal Assistance Corp., 126 Pine Street, Room 303, Corning, New York 14830.

THIRD: Pursuant to Rule 65 of the Federal Rules of Civil Procedure, I notified the following attorneys for the interested parties that an application for a temporary restraining order would be made to this Court on Friday, March 15, 1974, at Room 705 of the United States Court House, Foley Square, New York, New York:

Petition for Removal of Tenant, Justice Court, Town of Middlesex, Exhibit "A" to Beverly Affidavit Omitted in Printing.

(1) Amy Juviler, Esq.
Assistant Attorney General,
Of Counsel to Louis J. Lefkowitz
Attorney General for the State of New York
Two World Trade Center
New York, New York 10047

Attorneys for Defendant Lavine

(2) Harrison Downs, Esq.
Attorney for George E. Boisvert,
Commissioner of the Ontario County
Department of Social Services

(3) Sherwood Alexander, Esq.
Of Counsel to Harry Lott, Esq.
Westchester County Attorney

Attorneys for Defendant Berman.

(Sworn to by Gerald A. Norlander, March 14, 1974.)

Petition for Removal of Tenant, Justice Court, Town of Middlesex, Exhibit "A" to Beverly Affidavit Omitted in Printing.

Affidavit of Doug Berky in Support of Show Cause Order.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

STATE OF NEW YORK }
COUNTY OF STEUBEN } ss.:

DOUG BERKY, being duly sworn deposes and says:

1. I am a VISTA Volunteer with Project Reach of Cohocton, New York and reside at 216 Gibson Street in the City of Canandaigua, Ontario County, New York.

2. On February 20, 1974 I went with Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly (hereinafter plaintiffs) to help them apply for public assistance from the Ontario County Department of Social Services under the Home relief program. I was fully familiar with the facts of their situation and of the reasons for the termination of their employment. I thought that with someone there to help them explain the reasons why they left work and why they came to Ontario County, they might have a better chance of having their applications approved. I helped them explain their desperate situation and their need for prompt emergency assistance. I also fully explaned why they left their job at Emerson Poultry Farm. However, I was told that did not matter and that they were not eligible for public assistance if they quit their job within 75 days of their application. Neither plaintiffs nor myself were advised of how they might contest this decision and rebut the presumption of Section 131(10) of the Social Services Law. Indeed we were not even advised that this was only a rebuttable presumption.

3. On February 22, 1974 I again went with plaintiffs to the Ontario County Department of Social Services. Once again plaintiffs were not given public assistance because of the 75 days rule, but this time they were given food stamps.

4. On February 25, 1974 after consulting with an attorney I called the Rochester office of the New York State Department of Social Services to request a state fair hearing for plaintiffs. I apprised them of the nature of the problem and stressed the extreme urgency of plaintiffs' situation. I requested that a prompt expedited fair hearing for all four plaintiffs be held. I was told that the hearing should be held the following week the week of March 4, 1974. I confirmed my hearing request by a letter of the same date to the New York State Department of Social Services in Albany. A copy of the letter is attached hereto as Exhibit "A".

5. Also, on February 25, 1974 after being advised by an attorney that the Beverlys had a right to a written notice of the reasons for the denial of their assistance, I went to the Ontario County Department of Social Services and requested a written notice. I was at first told that they could not give me one at that time but that they might arrange to send me one in the mail. Then in an apparent change of mind they gave me a written notice stating that the application was denied because "You quit your job without good cause." A copy of the denial notice is attached hereto as Exhibit "B".

6. Last week I did receive a notice in the mail advising me that the fair hearing was scheduled for March 14, 1974. However, I have now received another notice stating that the hearing will be held on March 20. I assume, although

I am not sure, that this means the hearing has been adjourned until March 20, 1974. Copies of both scheduling notices are attached as Exhibits "C" and "D" respectively.

7. I know that the plaintiffs are destitute and in desperate need of assistance. I went with plaintiffs to Program Funding, Inc. in Rochester where they obtained a loan of $200 between the four of them. The loan is restricted for use to enable them to find housing. Project Reach is currently attempting to help plaintiffs locate new housing. A special attempt is being made in the Middlesex area of Yates County so that they will be able to go back to their old jobs with Emerson Poultry. To date the search has not been successful.

WHEREFORE, your deponent respectfully requests that the full relief requested by plantiffs be granted.

(Sworn to by Doug Berky, March 11, 1974.)

Request for an Expedited Fair Hearing, Exhibit "A" to Berky Affidavit.

Doug Berky
Project Reach
Box 4087, Cohocton, N. Y. 14826
(716) 728-2277 / 728-2685
February 25, 1974

New York State Dept. of Social Services
Fair Hearing Section
1450 Western Avenue
Albany, New York

Dear Sirs:

This letter is to confirm my request for a prompt expedited group hearing as soon as possible for Joseph Beverly, Odel Beverly, John Beverly, and William Beverly. They were denied assistance at the Ontario County Dept. of Social Services in Canandaigua, because they had quit their jobs. However, they were forced to quit their jobs due to lack of housing. I cannot stress enough the urgency of having the hearing as soon as possible. They are without housing and are having difficulties finding a place to stay as well as employment.

Could you please send me copies of all the documents that the agency intends to use in this hearing.

Also, I would like to request transportation money for myself to represent the Beverly's at the hearing.

Sincerely,

DOUG BERKY
Doug Berky
Community Services

Written Notice of Denial of Application for Public Assistance, Exhibit "B" to Berky Affidavit.

Canandaigua, New York 14424

COMMISSIONER: George E. Boisvert

Telephone: (315) 394-8830

NOTICE OF DECISION ON APPLICATIONS

To: Joseph Beverly
101 Clark Street
Canandaigua, N.Y. 14424

Case #14449

Date: 2/5/74

Inc. Maint. #0422

Only the items checked below pertain to you. Please read carefully.

☐ APPLICATION ACCEPTED: Your application for .... has been accepted. On ....., we are issuing you a check for $..... This amount will continue on a ..... basis so long as you remain eligible. Please be mindful of your obligation as indicated on your application to notify this agency immediately of any financial or other change affecting your budget. Use the DSS-1186 form, given to you when you applied, to report any change. SEND IN VERIFICATION ALSO IF YOU HAVE IT.

• • • The following is the statement which you signed on the application form.

I have signed this application and given the information required to the Department of Social Services as the basis for giving me Public Assistance. I swear (or) affirm

Written Notice of Denial of Application for Public Assistance, Exhibit "B" to Berky Affidavit.

that the information given on this application/certification form is true and correct. I understand that by signing this application/certification form, I consent to any investigation made by the Department of Social Services to verify or confirm the information I have given or any other investigation made by them in connection with my request for Public Assistance. *I agree to inform the agency promptly of any change in my needs, income, property, living arrangements or address to the best of my knowledge and belief.* I further swear (or) affirm that I ☐ am ☐ am not receiving public assistance and that I have not given any of my property to anyone to get Public Assistance. I understand that the law provides for fine or imprisonment, or both, for a person found guilty of obtaining assistance by hiding facts or not telling the truth. If additional information should be required, I will provide it. •••

☐ BUDGET: Please look at your monthly budget on the back of this form.

☒ Your application for public assistance has been denied because you quit your job without good cause.

If you believe that this action should not be taken, you may request a state fair hearing by telephoning 716-454-4272 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney, or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why this action should not be taken as well as an opportunity to question any persons who appear at the hearing and present evidence against you.

Notice of Fair Hearing, Exhibit "C" to Berky Affidavt.

NOTICE OF FAIR HEARING

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

To: Joseph Beverly
60 Main St.
a: Canandaigua, NY 14424

(Appellant's name and address)

Nombre y dirección del apelante

In response to your request for a fair hearing, your hearing will be held at the following time and place:

En respuesta a su petición por un juicio imparcial, su juicio será celebrado a la siguiente hora y lugar:

Place of Hearing: 120th North Main St.
Canandaigua, NY

Local del juicio

Date: 3/14/74

Fecha

Time: 3 pm

Hora

INSTRUCTIONS TO PARTIES

1. You must bring to this hearing the following: This notice; witnesses, if any, all evidence that has a bearing on this case, including all books, records and other forms of evidence.

Notice of Fair Hearing, Exhibit "C" to Berky Affidavit.

2. The appellant has the right to be represented by an attorney or other representative, to present documentary evidence, and to examine opposing witnesses and evidence.

3. The agency must provide for transportation for the appellant, his representatives and witnesses, and child care and other costs related to attending the hearing, if necessary.

NOTICE TO APPELLANT

1. If you are not able to appear for your hearing at the time and place indicated above, please call telephone number 487-7400 and explain why.

2. If you no longer wish to have a fair hearing, please sign the statement below and return this notice to the New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

I wish to withdraw my request for a fair hearing.

Signed: .....

INSTRUCCIÓNES LOS PARTICIPANTES

1. Ud. debe traer a éste juicio lo siguiente: Esta notificación; testigos, si es que tiene algunos; todas las pruebas que tengan relación con este caso, incluyendo todos los libros, registros y otras formas de pruebas escritas.

2. En apelante tiene el direcho de ser representado por un abogado o cualquir classe de representante, para presentar documentos eviventes y examinar los testigos y pruebas escritas.

3. La agencia debe proveer para la transportación del apelante, sus representantes y testigos, si es necesario

Notice of Fair Hearing, Exhibit "C" to Berky Affidavit.

también, por el cuidado de los niños y otros gastos encurredos por atender al juicio.

AVISO A APELANTE

1. Si a Ud. no se le hace posible comparecer al juicio a la hora y lugar arriba indicade, por favor llame al telefone No. y explique el porque.

2. Si Ud. ya no desea tener un juicio imparcial por favor firme la declaración más abajo y devuelva esta notificación al New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

Yo no deseo ya, tener un juicio.

Firma: .....

Category and Case No. HR

Programa y numero del caso

Agency: Ontario

Agencia

Representative: Mr. Douglas Beverly

Representante

Issue:

☐ Denial *Negacion* ☐ Failure to Act *Falta de actuacion* ☐ Other *Otro*

Date of Notice: 3/4/74

Fecha del aviso

☒ New *Nueva*

☐ Reschedules *Refijado*

Notice of Fair Hearing, Exhibit "D" to Berky Affidavit.

NOTICE OF FAIR HEARING

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

To: Beverly, Joseph (Appellant's name and address)
c/o D. Berky—Project Reach

a: Box 4087 *Nombre y direcci n del apelante*
Cohocton, NY 14826

In response to your request for a fair hearing, your hearing will be held at the following time and place:

En respuesta a su petición por un juicio imparcial, su juicio será celebrado a la siguiente hora y lugar:

Place of Hearing: 120 North Min St.
Canandaigua, NY
Local del juicio

Date: 3-20-74
Fecha

Time: 3 PM
Hora

INSTRUCTIONS TO PARTIES

1. You must bring to this hearing the following: This notice; witnesses, if any, all evidence that has a bearing on this case, including all books, records and other forms of evidence.

Notice of Fair Hearing, Exhibit "D" to Berky Affidavit.

2. The appellant has the right to be represented by an attorney or other representative, to present documentary evidence, and to examine opposing witnesses and evidence.

3. The agency must provide for transportation for the appellant, his representatives and witnesses, and child care and other costs related to attending the hearing, if necessary.

NOTICE TO APPELLANT

1. If you are not able to appear for your hearing at the time and place indicated above, please call telephone number and explain why.

2. If you no longer wish to have a fair hearing, please sign the statement below and return this notice to the New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

I wish to withdraw my request for a fair hearing.

Signed: .....

INSTRUCCIÓNES LOS PARTICIPANTES

1. Ud. debe traer a éste juicio lo siguiente: Esta notificación; testigos, si es que tiene algunos; todas las pruebas que tengon relación con este caso; incluyendo todos los libros, registros y otras formas de pruebas escritas.

2. En apelante tiene el direcho de ser representado por un abogado o cualquir classe de representante, para presentar documentos eviventes y examiner los testigos y pruebas escritas.

3. La agencia debe proveer para la transportación del apelante, sus representantes y testigos, si es necesario

Notice of Fair Hearing, Exhibit "D" to Berky Affidavit.

también, por el cuidado de los niños y otros gastos encurredos por atender al juicio.

AVISO AL APELANTE

1. Si a Ud. no se le hace posible comparecer al juicio a la hora y lugar arriba indicade, por favor llame al telefone No. y explique el porque.

2. Si Ud. ya no desea tener un juicio imparcial por favor firme la declaración más abajo y devuelva esta notificación al New York State Department of Social Services, 1450 Western Avenue, Albany, New York, 12203.

Yo no deseo ya, tener un juicio.

Firma: .....

Category and Case No.

Programa y numero del caso

Agency:

Agencia

Representative:

Representante

Issue:

☐ Denial *Negacion* ☐ Failure to Act *Falta de actuacion* ☐ Other *Otro*

Date of Notice: 3-7-74

Fecha del aviso

☐ New *Nueva*

☐ Reschedules *Refijado*

Proposed Intervenor's Complaint of Joe Nathan Beverly, Willie Beverly and John Beverly.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

I.

INTRODUCTION

1. This is an action authorized by 42 U.S.C. Sect. 1983, brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, arising from the defendants' enforcement and application of a New York welfare statute, New York Social Services Law Sect. 131(10) (McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 *N.Y.C.R.R.* Sect. 385.7, in violation of rights secured to the plaintiffs by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Declaratory relief, injunctive relief and damages are sought.

2. The intervenor-plaintiffs, who are indigent and needy, have been sanctioned and disqualified from receiving any public assistance by defendants and their agents for a period of seventy-five days, under color of the statute and regulation challenged herein, which establish a presumption that intervenor-plaintiffs' employment was terminated for the purpose of qualifying for public assistance eligibility. Defendant Lavine has denied intervenor-plaintiffs' request for a prompt hearing that would provide an opportunity for him to rebut the presumption challenged herein.

II.

JURISDICTION

3. Jurisdiction is conferred on this Court by 28 U.S.C. Sect. 1343(3), which provides for original jurisdiction of this Court in any civil action to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the United States Constitution. Intervenor-plaintiffs' request for injunctive relief, retroactive benefits and damages is authorized by 42 U.S.C. Sect. 1983, and their request for a declaratory judgment is authorized by 28 U.S.C. Sect. 2201 and Sect. 2202.

III.

THREE-JUDGE COURT

4. This is a proper case for determination by a three-judge court, pursuant to 28 U.S.C. Sect. 2281 and Sect. 2284, since plaintiff seeks to restrain and enjoin the enforcement, operation and execution of New York Social Services Law Sect. 131(10) (McKinney Supp. 1973) and 18 *N.Y.C.R.R.* Sect. 385.7, both of which are of statewide applicability, on the grounds that the statute and regulation are contrary to the United States Constitution.

IV.

INTERVENOR-PLAINTIFFS

5. Intervenor-plaintiff Joe Nathan Beverly is an adult citizen of the United States who temporarily resides with

friends at 60 South Main Street in the City of Canandaigua, County of Ontario, New York.

6. Intervenor-plaintiff Willie Beverly is an infant citizen of the United States who temporarily resides at 60 South Main Street in the City of Canandaigua, County of Ontario, New York. Intervenor-plaintiff Willie Beverly is twenty years of age and brings this action by his natural mother and next friend Roberta Beverly, an adult citizen of the United States who resides at 106 Brewster Street in the City of Canandaigua, County of Ontario, New York.

7. Intervenor-plaintiff Odell Beverly is an infant citizen of the United States who temporarily resides at 60 South Main Street in the City of Canandaigua, County of Ontario, New York. Intervenor-plaintiff Odell Beverly is eighteen years of age and brings this action by his natural mother and next friend Roberta Beverly, an adult citizen of the United States who resides at 106 Brewster Street in the City of Canandaigua, County of Ontario, New York.

8. Intervenor-plaintiff John Beverly is an infant citizen of the United States who temporarily resides at 60 South Main Street in the City of Canandaigua, County of Ontario, New York. Intervenor-plaintiff John Beverly is seventeen years of age and brings this action by his natural mother and next friend Roberta Beverly, an adult citizen of the United States who resides at 106 Brewster Street in the City of Canandaigua, County of Ontario, New York.

V.

CLASS ACTION ALLEGATIONS

9. Plaintiffs are members of a class of needy persons residing in New York State who have been or may be

sanctioned and disqualified from receiving public assistance for a period of seventy-five days after the termination of their employment or reduction in earnings due to the enforcement and application by defendants of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* Sect. 385.7.

10. Plaintiffs are also members of a class of needy persons residing in New York State who have been, are, or may be sanctioned and disqualified by defendants from receiving any public assistance because of the enforcement of Section 131(10) of the New York Social Services Law and 18 N.Y.C.R.R. Sect. 385.7, and who have been, are, or may be denied the opportunity for a prompt hearing to rebut the defendants' presumption that their employment was terminated or earnings reduced for the purpose of qualifying for public assistance or a larger amount thereof.

11. The named plaintiff Joe Nathan Beverly brings this action on his own behalf and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The named plaintiff Roberta Beverly brings this action on behalf of her infant sons Willie Beverly, Odell Beverly and John Beverly pursuant to Rule 17(c) of the Federal Rules of Civil Procedure and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The classes described in Paragraphs "8" and "9", above, are so numerous that joinder of all their members in this action would be impracticable. The defendants or their agents and employees are believed to have knowledge of the number of persons disqualified for public assistance under the statute and regulation challenged herein, and thus they are believed to have knowledge of the exact or

approximate size of the classes described in Paragraphs "8" and "9", which are believed to consist of several thousand persons. There are questions of law and fact common to the classes, namely, the constitutional validity of New York Social Services Law Sect. 131(10) and 18 *N.Y.C.R.R.* Sect. 385.7 and the constitutionality of denying plaintiffs a prompt hearing that would afford them an opportunity to rebut the statutory presumption. The claims of the representative party are typical of the claims of the classes. The Legal Aid Society of Westchester County, attorney for plaintiff Ronald Milne and Monroe County Legal Assistance Corporation attorney for intervenor-plaintiffs Joe Nathan Beverly, Willie Beverly, Odell Beverly & John Beverly will fairly and adequately protect the interests of the classes. The defendants have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

VI.

Defendants

12. Defendant Leonard Berman is sued individually and in his official capacity as Commissioner of the Westchester County Department of Social Services. He is responsible for the administration of New York State's public assistance programs in the County of Westchester, New York. His offices are at Room 432 of the Westchester County Office Building, White Plains, Westchester County, New York.

13. Defendant Abe Lavine is sued individually and in his official capacity as Commissioner of the New York State Department of Social Services. He is responsible

for the administration of New York State's public assistance programs throughout New York State. He has an office located at Two World Trade Center, New York City, New York County, New York.

14. Defendant George E. Boisvert is sued individually and in his official capacity as Commissioner of the Ontario County Department of Social Services. He is responsible for the administration of New York State's public assistance programs in Ontario County, New York. His offices are at 120 North Main Street, Canandaigua, Ontario County, New York.

VII.

Factual Allegations

15. Until on or about January 11, 1974 plaintiffs Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly (hereinafter plaintiffs) were all employed as farmworkers for $2.00 per hour by Emerson Poultry Farm, R.D. #1, Middlesex, Yates County, New York.

16. During the time plaintiffs worked at Emerson Poultry Farm they lived with a sister in the Town of Middlesex a couple of miles from the farm. Their employer provided transportation to and from work.

17. On or about January 10, 1974 plaintiffs' sister was served with a petition to remove, from the Justice Court of the Town of Middlesex. A copy of the petition is annexed hereto as Exhibit "A". Plaintiffs knew that an eviction was imminent because they had received a previous warning because of their sister's delinquent account with the landlord. Plaintiffs and plaintiffs' sister searched

for new quarters in the Middlesex vicinity but were unable to locate adequate quarters in that rural area. The search was made more difficult by plaintiffs minority racial status. Plaintiffs are black and were forced to search for housing in an area where there were only 225 black people in the whole county according to the 1970 U.S. census.

18. Unable to locate housing in the Town of Middlesex and under the impression that they had to vacate their rented quarters immediately, plaintiffs and their sister moved approximately four miles to Gorham where they stayed for about a week until their sister's new landlord said he wanted plaintiffs out because he had rented to only one family. Plaintiffs then moved approximately eighteen miles to the City of Geneva in Ontario County where they stayed with their mother for 3 or 4 days. They had to leave there because their mother only has two rooms and has another son living with her and she simply could not afford to support four additional people on her very limited income from the Social Security Administration.

19. As a result of the forced move, plaintiffs were obliged to quit their jobs at Emerson Poultry Farm for lack of transportation. There is no public transportation because Canandaigua and Middlesex nor between Geneva and Middlesex and none of plaintiffs has a drivers license. The distance was too far for the employer to transport them to and from work on a daily basis.

20. After leaving their mother's apartment plaintiff Willie Beverly stayed with a friend in Geneva while plaintiffs Joe Nathan Beverly, Odell Beverly & John Beverly, left to stay with another sister, Irene Curry, her husband and child at 109 Clark Street in the City of Canandaigua.

When the Currys moved to a two bedroom apartment at 106 Bristal Street in the City of Canandaigua, the three plaintiffs moved with them. They remainded there until on or about February 6, 1974 when they were obliged to leave because of the overcrowding and objections from Mrs. Curry's landlord and because Mrs. Curry could not afford to feed them all.

21. On their arrival in Canandaigua, plaintiffs Joe Nathan Beverly, Odell Beverly and John Beverly were destitute and were compelled to live off the charity of their sister while they tried to obtain employment.

22. After failing to find employment in or around the City of Canandaigua, plaintiffs Joe Nathan Beverly, Odell Beverly and John Beverly went together to the office of the Ontario County Department of Social Services to apply for public assistance under the home relief program. They explained that they were without funds, and how they ended up in Canandaigua. All three applications were denied orally on the same date. No reason for the denial was given and no written notice of denial was provided at that time. All three were told to return on different dates, plaintiff Joe Nathan Beverly on Tuesday, January 29, 1974 and the other two on January 30, and 31.

23. Plaintiffs Joe Nathan Beverly, Odell Beverly and John Beverly explained their experience at the Ontario County Department of Social Services to Mrs. Marilyn Herrgesell, the Executive Director of the Voluntary Action Center in Canandaigua. Mrs. Herrgesell then called Mrs. Lillian Hoffman the Director of Income Maintenance at the Ontario County Department of Social Services to find out why plaintiffs Joe Nathan Beverly, Odell Beverly and

John Beverly were denied assistance. Mrs. Hoffman said the applications were denied because they had voluntarily left their jobs. Mrs. Herrgesell was familiar with plaintiffs' situation and explained to Mrs. Hoffman that they did not leave voluntarily but were forced to do so by the lack of available housing in the Middlesex area. Mrs. Hoffman stated that did not matter and they would still be considered to have voluntarily left their jobs and that whenever someone voluntarily left their job they are ineligible for public assistance.

24. On January 29, 1974 plaintiff Joe Nathan Beverly returned once again to the Ontario County Department of Social Services and once again was turned down without written notice. As a result of his experience the other brothers did not return on January 30 and 31.

25. On or about February 6, 1974 plaintiffs Joe Nathan Beverly, Odell Beverly and John Beverly moved to the apartment of some friends, Mr. and Mrs. Gary Morehouse of 60 South Main Street in the City of Canandaigua, where they remain to the present time. They were rejoined at that address by plaintiff Willie Beverly. The Morehouses are public assistance recipients and have been unable to provide plaintiffs with any food on their meager budget. In order to eat, plaintiffs had to rely on a food grant provided by the St. Vincent de Paul Society.

26. On February 20, 1974 plaintiffs Joe Nathan Beverly, Odell Beverly and John Beverly returned to the Ontario County Department of Social Services to reapply for public assistance. This time they were accompanied by plaintiff Willie Beverly and by Doug Berky, a VISTA Volunteer associated with Project Reach of Cohocton, New York. Once again they explained that they were

destitute and once again they were denied assistance without notice of denial. Mr. Berky was told by the person they spoke to that plaintiffs could not receive assistance within 75 days of having voluntarily left their employment. Once again, an explanation of the circumstances of their departure was to no avail.

27. On February 22, 1974 plaintiffs again went to the Ontario County Department of Social Services with Doug Berky. This time they were given food stamps, but they were still denied any public assistance benefits.

23. Except for the period from on or about February 22, 1974 to on or about February 28, 1974 when plaintiff Joe Nathan Beverly was employed by a janitorial service in the City of Canandaigua, plaintiffs have been unable to find employment.

29. Plaintiffs must leave their present temporary quarters since the friends with whom they are staying will need the space when their new child is born. The child is expected in a matter of days.

30. After the denial of assistance plaintiffs, with the assistance of Mr. Doug Berky, the VISTA Volunteer from Project Reach, obtained a loan from Program Funding, Inc. of Rochester for $200.00. The loan was obtained to enable plaintiffs to find housing and is explicitly restricted to that purpose.

31. Plaintiffs have no resources other than the restricted loan from Program Funding, Inc. and the food stamps they receive from the Ontario County Department of Social Services.

32. On or about February 25, 1974 Mr. Doug Berky went to the Ontario County Department of Social Services and requested written notice of the reasons for denial of plaintiffs' applications. He was then given a written notice which stated that the applications were denied because "You quit your job without good cause". The notice also stated "If you believe this action should not be taken, you may request a state fair hearing . . .". This was the first notice that plaintiffs or their representatives were given of their right to a fair hearing from the New York State Department of Social Services.

33. Plaintiffs were sanctioned and disqualified from receiving public assistance under color of Section 131(10) of the New York Social Services Law (McKinney Supp. 1973):

New York Social Services Law Sect. 131(10)

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

34. Plaintiffs were sanctioned and disqualified from receiving assistance pursuant to 18 N.Y.C.R.R. Sect. 385.7, which provides as follows:

> 18 N.Y.C.R.R. Sect. 385.7 Sanctions
>
> "(a) • • •
>
> (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or simlarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

This regulation is enforced throughout New York State by defendant Lavine. Defendant Boisvert enforces the regulation in Ontario County, New York, in accordance with the directives of defendant Lavine.

35. Defendant Lavine does not provide prompt "Fair Hearings" and decisions thereafter that would provide plaintiffs with an opportunity to rebut the charges made by defendant Boisvert's agents that they voluntarily left their employment for the purpose of obtaining Home Relief, prior to the imposition of the sanction established under Section 131(10) of the New York Social Services Law.

36. On February 25, 1974 Doug Berky requested a state fair hearing on plaintiffs' behalf by telephoning the offices of the New York State Department of Social Services in Rochester. He explained the urgency of the situation and requested an expedited hearing. He was told that the hearing might be scheduled for the following week, the week of March 4, 1974. The telephone request was confirmed by letter on the same date, addressed to the Fair Hearing Section of the New York Department of Social Services in Albany. The letter once again stressed the need for a prompt hearing. A copy of Mr. Berky's letter of February 25, 1974 to the New York State Department of Social Services is attached hereto as Exhibit "C".

37. The week of March 4, 1974 has passed and no hearing has yet been held. The hearing has been scheduled to be heard in Canandaigua on March 14, 1974. Upon information and belief, a decision after hearing by defendant Lavine will not be rendered until at least one month after the date of a hearing.

38. If plaintiffs had been accorded a prompt "Fair Hearing", they would have claimed that they did not voluntarily leave their employment for the purpose of obtaining public assistance.

39. Defendants have applied New York Social Services Law Sect. 131(10) and 18 *N.Y.C.R.R.* Sect. 385.7 in a manner that created a conclusive presumption that plaintiffs' employment was voluntarily terminated in order that plaintiffs would be eligible for public assistance, and without affording plaintiffs an opportunity to rebut the presumption within the seventy-five day statutory period.

40. Upon information and belief, defendnt Boisvert has maliciously and in bad faith and with the intent to discourage needy persons from obtaining the public assistance they are legally entitled to, approved, tolerated and fostered the promulgation of memoranda, procedural guidelines, or other policies, customs or usages which direct employees of the Ontario County Department of Social Services to automatically deny public assistance to all needy applicants who apply within seventy-five days after the termination of their employment or reduction in earnings, without regard to evidence supplied by applicants which rebuts the presumption that their employment was voluntarily terminated or earnings reduced for the purpose of obtaining public assistance, and with the knowledge that it is futile for such applicants to obtain timely relief from a denial of assistance through defendant Lavine's "Fair Hearing" procedures. Memoranda, policy statements, procedural guidelines and policies, customs or usages are believed to be promulgated secretly and in bad faith violation of Part 300 of Title 18 of the New York Code of Rules and Regulations, which requires that such materials be published, approved by defendant Lavine, and available to plaintiffs and interested persons.

41. Upon information and belief, defendant Lavine has, by his decisions after "Fair Hearings", in bad faith approved, encouraged, tolerated and fostered the application by defendant Boisvert of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* Sect. 385.7 as a conclusive presumption that disqualified plaintiffs from receiving public assistance for seventy-five days.

42. Plaintiffs have suffered hunger, humiliation and stigma resulting from their destitution, great hardship, injury and damage in the amount of $2,000 each as a

direct result of the operation and enforcement of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* Sect. 385.7, and as a direct result of the malicious and bad faith application of this statute and regulation by defendants.

VIII.

Legal Claims

43. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations, on their face and as applied to plaintiffs, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because they establish a presumption of the motivation and need of applicants for public assistance that is arbitrary, irrational, factually insupportable, and unrelated to the purposes of New York's public assistance program, and because said statute and regulation are impermissibly vague and overbroad in failing to define conduct that constitutes a voluntary termination of employment.

44. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they sanction and disqualify needy persons from receiving public assistance without an apportunity for a prompt hearing which would afford them an opportunity to rebut the statutory presumption. Alternatively, the challenged statute and regulation as applied by defendants violates the Due Process and Equal Protection clauses of the Fourteenth Amendment to the United States Con-

stitution, and Section 133 of the New York Social Services Law, because defendants do not accord persons sanctioned and disqualified under the challenged statute and regulation emergency assistance pending the outcome of "Fair Hearings" provided by defendant Lavine.

45. Defendants have applied New York Social Services Law Sect. 131(10) and 18 *N.Y.C.R.R.* Sect. 385.7 so as to conclusively presume that plaintiffs' employment was terminated for the purpose of qualifying for public assistance eligibility, without affording plaintiffs an opportunity to rebut the presumption within the seventy-five day statutory sanction period in violation of plaintiffs' rights guaranteed by the Fourteenth Amendment to the United States Constitution.

46. Defendants Boisvert and Lavine are liable to plaintiffs Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly in the amount of $2,000 each compensatory damages, and in the amount of $2,500 each for punitive damages, pursuant to 42 U.S.C. Sect. 1983, by reason of their malicious and bad faith application of Section 131(10) of the New York Social Services Law in violation of plaintiffs' rights to Due Process of Law and Equal Protection of the Law that are guaranteed to plaintiffs under the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiffs respectfully pray on their own behalf and on behalf of all persons similarly situated, that this Court:

(A) Assume jurisdiction of this cause pursuant to 28 U.S.C. Sect. 1343(3);

(B) Convene a three-judge court pursuant to 28 U.S.C. Sects. 2281, 2284 to determine this controversy;

(C) Determine by order that this action be maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(D) Enter a final judgment pursuant to 28 U.S.C. Sects. 2201, 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations on their face and as applied are contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

(E) Enter a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their agents, employees, successors and all others acting in concert with them from enforcing or applying the above statute and regulation without providing plaintiffs with prompt hearings and/or temporary or emergency assistance to plaintiffs pending a hearing;

(F) Enter a permanent injunction enjoining defendants, their agents, employees, successors and all others in concert with them from enforcing New York Social Services Law Sect. 131(10) and 18 *N.Y.C.R.R.* Sect. 385.7 in such a manner as to conclusively presume that an applicant for public assistance had his employment terminated for the purpose of qualifying for public assistance;

(G) Enter a judgment awarding plaintiffs and all others similarly situated public assistance grants retroactive to the date of their applications for assistance;

(H) Enter a judgment in favor of plaintiff Joe Nathan Beverly against defendants Boisvert and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. Sect. 1983 and Rule 54 of the Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Two Thousand Dollars ($2,000) and punitive damages of Two Thousand Five Hundred Dollars ($2,500);

(I) Enter a judgment in favor of plaintiff Willie Beverly against defendants Boisvert and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. Sect. 1983 and Rule 54 of the Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Two Thousand Dollars ($2,000) and punitive damages of Two Thousand Five Hundred Dollars ($2,500);

(J) Enter a judgment in favor of plaintiff Odell Beverly against defendants Boisvert and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. Sect. 1983 and Rule 54 of the Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Two Thousand Dollars ($2,000) and punitive damages of Two Thousand Five Hundred Dollars ($2,500);

(K) Enter a judgment in favor of plaintiff John Beverly against defendants Boisvert and Lavine,

in their individual capacities, jointly and severally, pursuant to 42 U.S.C. Sect. 1983 and Rule 54 of the Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Two Thousand Dollars ($2,000) and punitive damages of Two Thousand Five Hundred Dollars ($2,500);

(L) Award plaintiff their costs, disbursements and fees herein;

(M) Grant plaintiffs and all other person as similarly situated such other and further relief as the Court may deem just, proper and equitable.

Dated: March 11, 1974, Corning, New York.

Respectfully submitted,

GERALD A. MCINTYRE
Monroe County Legal Assistance Corp., Flood Disaster Relief Project
Attorneys for Intervenor-Plaintiffs
Gerald A. McIntyre,
of counsel

Order Granting Motions of Lee and Streeter to Intervene.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RONALD MILNE, individually and on behalf of all persons similarly situated,

Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and

ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants.

This cause coming on to be heard on the motions of proposed plaintiff intervenors Douglas Streeter and Robert C. Lee for leave to intervene as parties plaintiffs in the above captioned action, and the court having considered their motions, proposed complaints, and memoranda of points and authorities in support of their motions, and it appearing to the court that Douglas Streeter and Robert C. Lee should be permitted to intervene in this action as parties plaintiffs, it is

ORDERED that Robert C. Lee be and he hereby is granted leave to intervene in this action as a party plaintiff, and is hereby made a party to this cause, and to that end his proposed intervenor's complaint, filed February 15, 1974 is hereby deemed to be his complaint in this cause, and it is further

Intervenor Streeter's Complaint.

ORDERED that Douglas Streeter be and he hereby is granted leave to intervene in this action as a party plaintiff, and is hereby made a party to this cause, and to that end may file a complaint in this cause in the same manner and with like effect as if named an original party to this cause.

INZER B. WYATT
United States District Judge

Dated: March 27, 1974
New York, New York.

Intervenor Streeter's Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

I.

INTRODUCTION

1. This is an action authorized by 42 U.S.C. § 1983, brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, arising from the defendants' enforcement and application of a New York welfare statute, New York Social Services Law §131(10) (McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 *N.Y.C.C.R.* § 385.7, in violation of rights secured to the plaintiffs by the Due Process and Equal Protection Clauses

of the Fourteenth Amendment to the United States Constitution.

2. The plaintiff, who is indigent and needy, was sanctioned and disqualified from receiving any public assistance by defendants and their agents for a period of seventy-five days, under color of the statute and regulation challenged herein which establish a presumption that plaintiff's employment was terminated for the purpose of qualifying for assistance eligibility. Plaintiff's request for a fair hearing that would provide an opportunity for him to rebut the presumption challenged herein, was provided to plaintiff, by Defendant Lavine, thirty days subsequent to plaintiff's request for same.

II.

Jurisdiction

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), which provides for original jurisdiction of this Court in any civil action to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the United States Constitution. Plaintiff's request for injunctive relief, retroactive benefits and damages is authorized by 42 U.S.C. § 1983, and his request for a declaratory judgment is authorized by 28 U.S.C. §§ 2201 and 2202.

III.

Three-Judge Court

4. This is a proper case for determination by a three-judge court, pursuant to 28 U.S.C. §§ 2281, 2284, since plaintiff seeks to restrain and enjoin the enforcement,

operation and execution of New York Social Services Law § 131(10) (McKinney Supp. 1973) and 18 *N.Y.C.R.R.* § 385.7, both of which are of statewide applicability, on the grounds that the statute and regulation are contrary to the United States Constitution.

IV.

Intervenor Plaintiff

5. Plaintff, Douglas Streeter, is an adult citizen of the United States and of the State of New York, who resides at 435 North Main Street, in the Village of Port Chester, County of Westchester, New York.

V.

Class Action Allegations

6. Plaintiff is a member of a class of needy persons residing in New York State who have been or may be sanctioned and disqualified from receiving public assistance for a period of seventy-five days after the termination of their employment or reduction in earnings due to the enforcement and application by defendants of § 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7.

7. Plaintiff is also a member of a class of needy persons residing in New York State who have been or may be sanctioned and disqualified by defendants from receiving any public assistance because of the enforcement of § 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and who have been, are, or may be denied the opportunity for a prompt hearing to rebut the defendants' presumption that their employment was

terminated or earnings reduced for the purpose of qualifying for public assistance.

8. The named plaintiff brings this action on his own behalf and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The classes described in Paragraphs "6" and "7", above, are so numerous that joinder of all their members in this action would be impracticable. The defendants or their agents and employees are believed to have knowledge of the number of persons disqualified for public assistance under the statute and regulation challenged herein, and thus they are believed to have knowledge of the exact or approximate size of the classes described in Paragraphs "6" and "7", which are believed to consist of several thousand persons. There are questions of law and fact common to the classes, namely, the constitutional validity of New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 and the constitutionality of denying plaintiffs a prompt hearing that would afford them an opportunity to rebut the statutory presumption. The claims of the representative party are typical of the claims of the classes. The Legal Aid Society of Westchester County, attorney for plaintiffs, will fairly and adequately protect the interests of the classes. The defendants have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

VI

Defendants

9. Defendant Leonard Berman is sued individually and in his official capacity as Commissioner of the Westchester

County Department of Social Services. He is responsible for the administration of New York State's public assistance programs in the County of Westchester, New York. His offices are at Room 432 of the Westchester County Office Building, White Plains, Westchester County, New York.

10. Defendant Abe Lavine is sued individually and in his official capacity as Commissioner of the New York State Department of Social Services. He is responsible for the administration of New York State's public assistance programs throughout New York State. He has an office located at Two World Trade Center, New York City, New York County, New York.

VII.

Factual Allegations

11. Plaintiff is 23 years of age, and he lives at 435 North Main Street, Village of Port Chester, County of Westchester, New York.

12. From August 30, 1973 until October 15, 1973 plaintiff was employed as a hop-filler at Life Savers, Incorporated in Port Chester, New York.

13. On October 14, 1973 plaintiff was ordered to shave his beard for company sanitary reasons. Since he was unable to do so he did not report to work in October 15, 1973 and sought new employment.

14. Plaintiff did not voluntarily terminate his employment in order to qualify for public assistance.

15. On October 30, 1974 plaintiff had exhausted his savings and applied for public assistance at the Port Chester

District Office of the Westchester County Department of Social Services.

16. On October 31, 1974, plaintiff received written notice from the Department of Social Services that his application for public assistance was denied because he had terminated his employment and that he would be eligible to apply for assistance after a sanction period of seventy-five (75) days.

17. Plaintiff did not believe any action could be taken to review said determination and he continued to seek other employment.

18. On December 5, 1973, plaintiff secured employment as an orderly at the Port Chester Nursing Home at $97.00 per week.

19. On January 7, 1974, plaintiff was informed by his employer that he had terminated his employment by failing to report in to his job at a specified time during his illness.

20. Plaintiff began to seek employment thereafter.

21. On January 13, 1974 plaintiff was in need of funds for rent and food and had exhausted his savings. He applied for public assistance at the Port Chester Office of the Westchester County Department of Social Services.

22. On January 17, 1974, plaintiff was informed in writing by the Department of Social Services that his application for public assistance was denied. The notice dated January 16, 1974 stated in pertinent part as follows:

> You were terminated from your job at the Port Chester Nursing Home on December 28, 1973. You

> are being sanctioned for 75 days and may reapply on April 13, 1974.
>
> If you are not satisfied with this decision, you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing, you must make your request within 60 days.

A copy of said notice is annexed hereto as Exhibit "A".

23. Plaintiff was sanctioned and disqualified from receiving public assistance under color of § 131(10) of the New York Social Services Law (McKinney Supp. 1973):

New York Social Services Law § 131(10):

> Any person who voluntarily terminated his employment or voluntarily reduced his erning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person.

24. Plaintiff was sanctioned and disqualified from receiving assistance pursuant to 18 *N.Y.C.R.R.* § 385.7, which provides as follows:

> 18 N.Y.C.R.R. § 385.7. Sanctions.

(a) • • •

(ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

This regulation is enforced throughout New York State by defendant Lavine. Defendant Berman enforces the regulation in Westchester County, New York, in accordance with the directives of defendant Lavine.

25. Defendant Lavine does not provide prompt "Fair Hearings" and decisions thereafter that would provide plaintiff with an opportunity to rebut the charges made by defendant Berman's agents that he voluntarily left his employment for the purpose of obtaining Home Relief, prior to the imposition of the sanction established under § 131(10) of the New York Social Services Law.

26. Plaintiff requested a "Fair Hearing" on January 28, 1974 which hearing was scheduled in the ordinary course of such scheduling by Defendant Lavine for February 28, 1974, thirty days after plaintiff's request.

27. On information and belief a decision after fair hearing by Defendant Lavine is rendered only after a period of approximately one month after the date of such hearing.

28. Plaintiff's "Fair Hearing" on February 28, 1974, Defendant Berman's agents requested an adjournment which was granted until March 20, 1974 over objection of plaintiff's counsel.

29. At said hearing on March 20, 1974, plaintiff claimed that he did not voluntarily terminate his employment in order to obtain public assistance.

30. Plaintiff is awaiting the determination of that "Fair Hearing".

31. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in a manner that created a conclusive presumption that plaintiff's employment was voluntarily terminated in order that plaintiff would be eligible for public assistance, and without affording plaintiff an opportunity to rebut the presumption within the seventy-five day statutory period.

32. Upon information and belief, defendant Berman has maliciously and in bad faith and with the intent to discourage needy persons from obtaining the public assistance they are legally entitled to, approved, tolerated and fostered the promulgation of memoranda, procedural guidelines, or other policies, customs or usages which direct employees of the Westchester County Department of Social Services to automatically deny public assistance to all needy applicants who apply within seventy-five days after the termination of their employment or reduction in earn-

ings, without regard to evidence supplied by applicants which rebuts the presumption that their employment was voluntarily terminated or earnings reduced for the purpose of obtaining public assistance, and with the knowledge that it is futile for such applicants to obtain timely relief from a denial of assistance throughout defendant Lavine's "Fair Hearing" procedures. Memoranda, policy statements, procedural guidelines and policies, customs or usages are believed to be promulgated secretly and in bad faith violation of Part 300 of Title 18 of the New York Code of Rules and Regulations, which requires that such materials be published, approved by defendant Lavine, and available to plaintiff and interested persons.

33. Upon information and belief, defendant Lavine has, by his decisions after "Fair Hearings", in bad faith approved, encouraged, tolerated and fostered the application by defendant Berman of § 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7 as a conclusive presumption that disqualified plaintiff from receiving public assistance for seventy-five days.

34. Plaintiff has suffered hunger, humiliation and stigma resulting from his destitution, great hardship, injury and damage in the amount of $500.00 as a direct result of the operation and enforcement of § 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and as a direct result of the malicious and bad faith application of this statute and regulation by defendants.

VII.

Legal Claims

35. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of

Rules and Regulations, on their face and as applied to plaintiff, violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because they establish a presumption of the motivation and need of applicants for insupportable, and unrelated to the purposes of New York's public assistance program, and because said statute and regulation are impermissibly vague and overbroad in failing to define conduct that constitutes a voluntary termination of employment.

36. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they sanction and disqualify needy persons from receiving public assistance without an opportunity for a prompt hearing which would afford them on opportunity to rebut the statutory presumption. Alternatively, the challenged statute and regulation as applied by defendants violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and § 133 of the New York Social Services Law, because defendants do not accord persons sanctioned and disqualified under the challenged statute and regulation emergency assistance pending the outcome of "Fair Hearings" provided by defendant Lavine.

37. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 so as to conclusively presume that plaintiff's employment was terminated for the purpose of qualifying for public assistance eligibility, without affording plaintiff an opportunity to rebut the presumption within the seventy-five day statutory sanction period in violation of plaintiff's rights guaranteed by

the Fourteenth Amendment to the United States Constitution.

38. Defendants Berman and Lavine are liable to plaintiff Douglas Streeter in the amount of $500.00 compensatory damages, and in the amount of $1,000 for punitive damages, pursuant to 42 U.S.C. § 1983, by reason of their malicious and bad faith application of § 131(10) of the New York Social Services Law in violation of plaintiff's rights to Due Process of Law and Equal Protection of the Law that are guaranteed by plaintiff under the Fourteenth Amendment to the United States Constitution.

WHEREFORE, Plaintiff respectfully prays on his own behalf and on behalf of all persons similarly situated, that this Court:

(A) Assume jurisdiction of this cause pursuant to 28 U.S.C. § 1343(3);

(B) Convene a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 to determine this controversy;

(C) Determine by order that this action be maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(D) Enter a final judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Rules 54, 57 and 58 of the Federal Rules of Civil Procedure declaring that § 131(10) of the New York Social Services Law and Part 335.7 of Title 18 of the New York Code of Rules and Regulations on their face and as applied are contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

(E) Enter a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedures, enjoining defendants, their agents, employees, successors and all others acting in concert with them from enforcing or applying the above statute and regulation without providing plaintiffs with prompt hearings and/or temporary or emergency assistance to plaintiffs pending a hearing;

(F) Enter a permanent injunction enjoining defendants, their agents, employees, successors and all others in concert with them from enforcing New York Social Services Law § 131(10) and 18 N.Y.C.R.R. § 385.7 in such a manner as to conclusively presume that an applicant for public assistance had his employment terminated for the purpose of qualifying for public assistance;

(G) Enter a judgment awarding plaintiff and all others similarly situated public assistance grants retroactive to the date of their applications for assistance;

(H) Enter a judgment in favor of plaintiff Douglas Streeter against defendants Berman and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. § 1983 and Rule 54 of the Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Five Hundred Dollars ($500) and in punitive damages of One Thousand Dollars ($1,000);

(I) Award plaintiff his costs, disbursements and fees herein;

(J) Grant plaintiff and all other persons similarly situated such other and further relief as the Court may deem just, proper and equitable.

Dated: April 8, 1974, New Rochelle, New York.

Respectfully submitted,

s/ CATHERINE CRONIN
The Legal Aid Society of
Westchester County
Martin A. Schwartz, of Counsel
Catherine Cronin, of Counsel
Gerald Norlander, of Counsel

Order Granting Motions of Willie Beverly, Odell Beverly, and John Beverly to Intervene.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

RONALD MILNE, individually and on behalf of all persons similarly situated,

Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and

ABE LAVINE, individually and as Commissioner of the New York State Department of Social Service,

Defendants.

This cause coming on to be heard on the motion of Willie Beverly, Odell Beverly and John Beverly, by their mother and next friend, Roberta Beverly, and Joe Nathan Beverly for leave to intervene as parties-plaintiffs in the above captioned action, adding George E. Boisvert as a party-defendant, and the Court having considered their motion and proposed complaint, and the Court having been advised by letter of the consent of defendant Lavine, and it appearing to the Court that the applicants should be permitted to intervene in this action as parties-plaintiffs, it is

ORDERED that Willie Beverly, Odell Beverly and John Beverly, by their mother and next friend, Roberta Beverly and Joe Nathan Beverly, be and they hereby are granted leave to intervene in this action as parties-plaintiffs and are hereby made parties to this cause, and to that end their proposed intervenors' complaint is hereby deemed to be their complaint in this case, to be answered within twenty (20) days from entry of this Order.

SO ORDERED.

Dated: April 10, 1974
New York, New York

/ INZER B. WYATT
.....
United States Circuit Judge

Dated:

.....
United States District Judge

Dated:

.....
United States District Judge

Notice of Motion to Intervene on Behalf of Anthony Brownlee and Ethel Reid.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

PLEASE TAKE NOTICE that upon the proposed complaints of Anthony Brownlee and Ethel Reid, proposed plaintiffs intervenors Brownlee and Reid will move this Court on the 10th day of May at M. at the United States Courthouse, Foley Square, New York, New York:

1. For an order pursuant to Rules 23 and 24 of the Federal Rules of Civil Procedure permitting Anthony Brownlee and Ethel Reid to intervene in this action as party plaintiffs.

The grounds of this motion, as are more fully set forth in the proposed intervenors' complaints and in plaintiffs' memorandum of points and authorities in support of this motion, are that the proposed intervenors complaints present an identical question of law as the named plaintiffs and present similar questions of fact, thereby making intervention appropriate pursuant to Rule 24(b) (2) of the Federal Rules of Civil Procedure and that intervention of the proposed intervenors may be necessary to protect interests of the other members of the class, thereby making intervention appropriate pursuant to Rule 23 of the Federal Rules of Civil Procedure.

Notice of Motion to Intervene on Behalf of Anthony Brownlee and Ethel Reid.

PLEASE TAKE FURTHER NOTICE that answering affidavits and memoranda, if any, must be served on counsel for plaintiffs at least three days prior to the return date of this motion.

Dated: April 15, 1974, White Plains, New York.

Respectfully Submitted,

MARTIN A. SCHWARTZ
The Legal Aid Society of
Westchester County
by: Martin A. Schwartz,
of Counsel
Gerald A. Norlander,
of Counsel
Attorneys for Proposed
Plaintiffs/Intervenors

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Ulysses Westbrook.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Upon the verified proposed intervention complaint of Ulysses Westbrook and the Certificate of his attorney attached hereto, and affidavit herein in support of this order, and upon the Amended Complaint in this action, it is

ORDERED, that defendants Berman and Lavine and proposed intervention-defendant James Reed show cause before this Court at a Civil Motion Term to be held at the United States Courthouse, Foley Square, New York, New York, Room 1106, on the 19th day of April, 1974, at 2:30 P.M. or as soon thereafter as counsel can be heard, why an order should not be made herein, granting the motion of proposed intervenor-plaintiff Ulysses Westbrook,

(a) Pursuant to Rules 23 and 24(b) of the Federal Rules of Civil Procedure, to intervene in this action as a named party plaintiff;

(b) Pursuant to Rules 19(a), 20(a) and 21 of the Federal Rules of Civil Procedure, to add as a party defendant James Reed, individually and as Commissioner of the Monroe County Department of Social Services;

(c) Pursuant to Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction enjoining defendant Lavine and proposed intervention-

Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Ulysses Westbrook.

defendant Reed, their agents and successors from sanctioning Ulysses Westbrook, under color of Section 131(10) of the New York Social Services Law and/or 18 NYCRR § 385.7, and enjoining defendant Lavine and proposed intervention-defendant Reed from denying Home Relief Public assistance to Ulysses Westbrook under color of the aforesaid law and regulation, pending a final determination of this action, waiving the security requirement of Rule 65(c).

The grounds for the motion are that it is appropriate for Ulysses Westbrook, a member of the alleged class of plaintiffs in the main action, to intervene at this early stage of the proceedings, since the facts of his case, the legal claims he makes, and his claims for relief are all substantially identical to those of Ronald Milne. Further, Ulysses Westbrook is in dire need of immediate individual relief from a sanction imposed upon him by proposed intervention-defendant Reed and defendant Lavine under the law and regulation challenged in the main action. Because Ulysses Westbrook is utterly destitute, waiver of security requirements should be granted.

ORDERED, that the security requirement of Rule 65 of the Federal Rules of Civil Procedure be waived, and it is further

ORDERED that this Order to show Cause, together with the papers upon which it is granted be served personally upon the attorneys for defendants on or before the 15th day of April, 1974 by 4 P.M.

Dated: April 12, 1974 at New York, N.Y.
Issued at

/s/ INZER B. WYATT
United States District Judge

Attorney's Certificate Pursuant to Rule 65.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COUNTY OF MONROE }
STATE OF NEW YORK } ss.:

STEVEN L. BROWN, being duly sworn, deposes and says as follows:

FIRST: I am the attorney for the application for intervention Ulysses Westbrook herein, and as such, I am familiar with the circumstances of his proposed intervention in this action.

SECOND: On April 9, 1974, at 9:00 A.M., I hand delivered a letter dated April 8, 1974, to the office of Carl Feinstock, Esq., chief counsel to proposed intervention-defendant James Reed, which informed him that an application for a temporary restraining order and intervention of Ulysses Westbrook and James Reed in this action would be made to the Honorable Inzer B. Wyatt at Room 1201, in the United States District Courthouse, Foley Square, New York, New York, 10007 at 2:30 P.M. on April 12, 1974. A copy of the letter is attached. I spoke to Mr. Feinstock on April 11, 1974 at which time he confirmed that he had received the notice dated April 8, 1974.

THIRD: As indicated on the copy of the letter attached hereto, copies of the notice letter were sent to the individual attorneys representing defendants Berman, Lavine

Letter from Steven L. Brown to Carl L. Feinstock.

and Plaintiff Milne in this action. Such copies were deposited by deponent, postage pre-paid and properly addressed at the central post office, Rochester, New York on April 8, 1974.

FOURTH: This affidavit is made pursuant to Rule 65 of the Federal Rules of Civil Procedure.

(Sworn to by Steven L. Brown, April 11, 1974.)

Letter from Steven L. Brown to Carl L. Feinstock.

MONROE COUNTY LEGAL ASSISTANCE CORP.

DAVID C. LEVEN, *Acting Executive Director*
GREATER UP-STATE LAW PROJECT
80 West Main Street
Rochester, New York 14614
Tel.: 716-454-6500

April 8, 1974

Carl L. Feinstock, Esq.
Monroe County Department of
Social Services
111 Westfall Road
Rochester, New York

Dear Carl:

You will recall that we discussed the case of a Mr. Ulysses Westbrook on March 29 and April 1, 1974. Mr. Westbrook is the gentleman who recently was suspended from his employment as a corrections officer at the Albion

Letter from Steven L. Brown to Carl L. Feinstock.

Correctional Facility, Albion, New York and was subsequently refused public assistance for seventy-five days from your agency pursuant to section 131(10) of the Social Services Law.

When I first brought the matter to your attention on March 29th, you were not familiar with the case but indicated a willingness to look into the matter after I briefed you on the basic facts involved in the case. Those basic facts which I told you then were as follows:

(1) On February 5, 1974, Mr. Westbrook, a state correction officer, was involved in an off-duty shooting incident which resulted in his being arrested and charged with assault.

(2) On February 6, 1974, he was suspended without pay from his employment.

(3) Mr. Westbrook subsequently applied for public assistance when he was without any income. He was denied assistance for seventy-five days by your department. (A copy of the denial notice, dated February 26, 1974, is enclosed).

You contacted me on April 1, 1974 and informed me that you had reviewed the case and supported the decision to deny assistance for the seventy-five day period. After a discussion of section 131(10) of the Social Services Law and its application to Mr. Westbrook, you affirmed your belief that my client should be subjected to the sanction contained in the statute on the ground that state fair hearing decisions supported such a result. You rejected my claim that the facts involved in Mr. Westbrook's loss of employment could not reasonably lead to the conclusion that he "voluntarily terminated" his employment for the purpose of receiving welfare.

Letter from Steven L. Brown to Carl L. Feinstock.

Since our discussion on April 1st, I have learned other facts about Mr. Westbrook's situation:

(1) He has been discharged from his job because of the February 5th incident but he is contesting the discharge through union grievance procedures.

(2) He has had no income since his suspension on February 6th and has fallen heavily into debt in trying to provide himself with necessities and legal representation relating to his arrest. He presently has nowhere to turn for help in obtaining food or financial help.

(3) He has not been able to provide support money to his wife and two children living in Elmira since his discharge and loss of income. His former salary was approximately $10,000 per year.

(4) Mr. Westbrook is 38 years old and has never before been on welfare. He has always supported himself from his employment. He was formerly employed by the Armour Meat Company here in Rochester from 1966 to 1971. That job ended when the company closed its Rochester facilities. Since early 1972, he has been in the state correction officer program. He had been employed at Albion for the past year after a transfer there from Attica Prison.

Since our last discussion, I have decided to seek to intervene Mr. Westbrook as a plaintiff in the action *Milne* v. *Berman*, 73 Civ. 5397, now pending in the United States District Court (S.D.N.Y.). That action challenges the constitutionality of section 131(10) of the Social Services Law and asks the court to enjoin its enforcement. By order dated February 20, 1974, Judge Inzer B. Wyatt determined that the action raised substantial constitutional questions

and required the convening of a three judge court to decide the claims of plaintiff. (A copy of the February 20th order and the plaintiff's amended complaint are enclosed). The three judge court is scheduled to hear the case on May 10, 1974.

In accordance with Rule 65 of the Federal Rules of Civil Procedure, Mr. Westbrook will request the granting of a temporary restraining order at 2:30 P.M. on Friday, April 12th from Judge Wyatt at his chambers, room 1201, United States Courthouse, Foley Square, New York, New York 10007. The restraining order sought will be to enjoin Mr. Reed and his employees from denying public assistance to my client pursuant to section 131(10) of the Social Services Law and 18 N.Y.C.R.R. § 355.7 pending final determination of *Milne* v. *Berman.*

Please consider this letter to be notice to you that such restraining order will be sought so that counsel from your Department may be present at such time if you so desire. I or an attorney from the Westchester Legal Aid Society will present the application to Judge Wyatt. I expect to provide to you by April 10th copies of the papers which will be presented in support of the application.

Thank you.

Yours truly,

Steven L. Brown
STEVEN L. BROWN

SLB:kv
cc: Judge Inzer B. Wyatt

Lewis J. Lefkowitz
Attorney General
Two World Trade Center
New York, New York 10047
Attn: Amy Juviler, Esq.

Harry Lott, Esq.
County Attorney, County of
Westchester
County Office Building
White Plains, New York 10601
Attn: Richard A. McAtamney, Esq.

Gerald A. Norldaner, Esq.
Legal Aid Society of Westchester
City Hall
Mount Vernon, New York 10550

Affidavit of Steven L. Brown, Attorney for Applicant for Intervention, Ulysses Westbrook.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STEVEN L. BROWN, Esq., being duly sworn, deposes and says:

1. That he is the attorney for Ulysses Westbrook and is representing him in this action in which he seeks a temporary restraining order and an order to intervene as a plaintiff in the action Milne v. Berman, 73 Civ. 5397 IBW.

2. As his representative, I have chosen to proceed in this matter by order to show cause rather than by Notice of Motion due to the extreme emergency and irreparable harm being suffered by Mr..Westbrook, as indicated in Mr. Westbrook's verified proposed intervenor's complaint.

3. The security requirement of Rule 65 of the Federal Rules of Civil Procedure should be waived because, as indicated in Mr. Westbrook's verified proposed intervenor's complaint, he has no source of income and is destitute.

4. No previous application has been made to any court for any of the relief sought herein.

(Sworn to by Steven L. Brown, April 11, 1974.)

Proposed Intervenor's Complaint of Ulysses Westbrook.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

I.

INTRODUCTION

1. This is an action authorized by 42 U.S.C. § 1983, brought as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, arising from the defendants' enforcement and application of a New York welfare statute, New York Social Services Law § 131(10) (McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 *N.Y.C.R.R.* § 385.7, in violation of rights secured to the plaintiffs by the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. Declaratory relief, injunctive relief and damages are sought.

2. The intervenor-plaintiff, who is indigent and needy, has been sanctioned and disqualified from receiving any public assistance by defendants and their agents for a period of seventy-five days, under color of the statute and regulation challenged herein which establish a presumption that intervenor-plaintiff's employment was terminated for the purpose of qualifying for public assistance eligibility. Defendant Lavine has failed to establish fair hearing procedures which provide for expedited and prompt hearing determinations which would provide

public assistance applicants, who are denied assistance pursuant to Section 131(10) of the Social Services Law, the opportunity to rebut effectively the presumption challenged herein before the seventy-five day sanction period elapses.

II.

Jurisdiction

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), which provides for original jurisdiction of this Court in any civil action to redress the deprivation, under color of state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the United States Constitution. Intervenor-plaintiff's request for injunctive relief, retroactive benefits and damages is authorized by 42 U.S.C. § 1983, and his request for a declaratory judgment is authorized by 28 U.S.C. §§ 2201 and 2202.

III.

Three-Judge Court

4. This is a proper case for determination by a three-judge court, pursuant to 28 U.S.C. §§ 2281, 2284, since plaintiff seeks to restrain and enjoin the enforcement, operation and execution of New York Social Services Law § 131(10) (McKinney Supp. 1973) and 18 *N.Y.C.R.R.* § 385.7, both of which are of statewide applicability, on the grounds that the statute and regulation are contrary to the United States Constitution.

IV.

Intervenor-Plaintiff

5. Intervenor-plaintiff Ulysses Westbrook [hereinafter referred to as "plaintiff"] is an adult citizen of the United States and of the State of New York, who resides at 19 Pearl Street in the City of Rochester, County of Monroe, New York.

Class Action Allegations

6. Plaintiff is a member of a class of needy persons residing in New York State who have been or may be sanctioned and disqualified from receiving public assistance for a period of seventy-five days after the termination of their employment or reduction in earnings due to the enforcement and application of defendants of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7.

7. Plaintiff is also a member of a class of needy persons residing in New York State who have been, are, or may be sanctioned and disqualified by defendants from receiving any public assistance because of the enforcement of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and who have been, are, or may be denied the opportunity for a prompt and expedited hearing to rebut the defendants' presumption that their employment was terminated or earnings reduced for the purpose of qualifying for public assistance.

8. The named plaintiff brings this action on his own behalf and on behalf of all other persons similarly situ-

ated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The classes described in Paragraphs "6" and "7", above, are so numerous that joinder of all their members in this action would be impracticable. The defendants or their agents and employees are believed to have knowledge of the number of persons disqualified for public assistance under the statute and regulation challenged herein, and thus they are believed to have knowledge of the exact or approximate size of the classes described in Paragraphs "6" and "7", which are believed to consist of several thousand persons. There are questions of law and fact common to the classes, namely, the constitutional validity of New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 and the constitutionality of denying plaintiffs a prompt hearing that would afford them an opportunity to rebut the statutory presumption. The claims of the representative party are typical of the claims of the classes. The Legal Aid Society of Westchester County, attorney for plaintiffs, and the Monroe County Legal Assistance Corporation, attorney for intervenor Westbrook, will fairly and adequately protect the interests of the classes. The defendants have acted and refused to act on grounds generally applicable to the classes, thereby making appropriate final injunctive and declaratory relief with respect to the classes as a whole.

VI.

Defendants

9. Defendant James Reed is sued individually and in his official capacity as Commissioner of the Monroe County Department of Social Services. He is responsible for the administration of New York State's public assistance programs in the County of Monroe, New York. His offices are at 111 Westfall Road, Rochester, New York.

10. Defendant Abe Lavine is sued individually and in his official capacity as Commissioner of the New York State Department of Social Services. He is responsible for the administration of New York State's public assistance programs throughout New York State. He has an office located at Two World Trade Center, New York City, New York County, New York.

VII.

Factual Allegations

11. Plaintiff is 38 years of age and lives alone at 19 Pearl Street, Rochester, New York.

12. Until February 6, 1974, plaintiff was employed as a state correction officer at the Albion Correctional Facility, Albion, New York at an annual salary of approximately $10,000 per year.

13. On February 6, 1974, plaintiff was suspended from his job, without pay after being arrested on a criminal charge of assault.

14. Plaintiff was subsequently sent a notice dated February 8, 1974, from the New York State Department of Correctional Services, Albany, New York informing him that he would be dismissed from his job effective February 19, 1974 because he violated employee rule 4.2, to wit, "In Rochester, Monroe County, New York at approximately 5:50 P.M. on February 5, 1974 you struck Charles Square with a pistol and shot him in the abdomen."

15. The February 8, 1974 notice also informed plaintiff that he could file a grievance to challenge the proposed dismissal.

16. Plaintiff filed a grievance to protest the dismissal action. The grievance hearing was heard on March 4, 1974 and resulted in a decision dated March 27, 1974 which affirmed the dismissal.

17. Plaintiff is presently pursuing additional review procedures in order to challenge his employment discharge.

18. Plaintiff has had no income since his February 6, 1974 suspension and subsequent dismissal from his job.

19. After his suspension and discharge, plaintiff retained a private attorney to represent him in the criminal court proceedings relating to the incident which resulted in his dismissal from employment. He presently owes his attorney $500.00 more in retainer fees.

20. On or about February 22, 1974, plaintiff applied for public assistance at the Monroe County Department of Social Services because he was without funds or resources to pay his rent, to buy food and to pay other financial obligations as they accrued.

21. When the plaintiff applied for public assistance, he informed appropriate employees of the Monroe County Department of Social Services that he had lost his job and his only source of income, that he was without funds and in need of financial help, and the circumstances of his employment termination.

22. At the time of his application and interview for public assistance, plaintiff was orally informed that he

would not be eligible for assistance for seventy-five days after his employment termination.

23. Plaintiff subsequently received a written notice dated February 26, 1974 from the Monroe County Department of Social Services denying his request for public assistance. The notice states:

> You were seen on an emergency basis on February 22, 1974. After Reviewing your situation it was decided: Your application has been denied because you were suspended from employment with New York State Department of Corrections, therefore 75 day sanction is invoked. (See copy of the February 22nd denial attached hereto and labeled Exhibit "A".)

The notice also notified plaintiff of his right to request a "fair hearing."

24. The paychecks plaintiff received after his suspension from his job, which paid him up through his job suspension, were utilized to pay his February rent payment and to provide his criminal attorney with his initial retainer fee.

25. Plaintiff is presently in dire financial need and has no source for financial resources. His April rent of $115.00 is not paid and he faces the threat of eviction unless it is paid in the near future.

26. Plaintiff has been forced since his denial of public assistance to borrow several hundred dollars and food from friends and relatives in order to pay his March rent, his lawyer fees, food costs and other costs of necessities.

27. Plaintiff recently sought legal help to obtain public assistance after he was no longer able to provide for his

needs from borrowing and from obtaining other assistance from friends and relatives.

28. Plaintiff has not been able to obtain other employment since his dismissal from his job. He has always supported himself from employment earnings and has never before been on public assistance. He was employed as a state corrections officer for two years at the time of his dismissal.

29. Plaintiff did not want to lose his job as a corrections officer and did not terminate or seek to terminate such employment for the purpose of obtaining public assistance.

30. Plaintiff was sanctioned and disqualified from receiving public assistance under color of Section 131(10) of the New York Social Services Law (McKinney Supp. 1973):

New York Social Services Law § 131(10):

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

31. Plaintiff was sanctioned and disqualified from receiving assistance pursuant to 18 *N.Y.C.R.R.* § 385.7, which provides as follows:

> 18 N.Y.C.R.R. § 385.7. Sanctions
>
> (a) • • •
>
> (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or request an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

This regulation is enforced throughout New York State by defendants Lavine, Defendant Reed enforces the regulation in Westchester County, New York, in accordance with the directives of defendant Lavine.

32. Defendant Lavine does not provide prompt "Fair Hearings" and decisions thereafter that would provide plaintiff with an opportunity to rebut the charges made by

defendant Reed's agents that he voluntarily left his employment for the purpose of obtaining Home Relief, prior to the imposition of the sanction established under Section 131(10) of the New York Social Services Law.

33. Upon information and belief, plaintiff's counsel, Steven L. Brown, Esq., requested, by a telephone call on April 8, 1974, to Mr. Ed Iovanelli, an employee of defendant Lavine's "Fair Hearing" Section, Office of Counsel, Department of Social Services, Albany, New York, that plaintiff be provided an "expedited" hearing. Plaintiff's counsel was informed that the hearing could not be scheduled before April 22, 1974. Upon information and belief, a decision after hearing by defendant Lavine will not be rendered for at least one month after the date of the hearing, now scheduled for April 22, 1974.

34. If plaintiff had been accorded a prompt and expedited "Fair Hearing", he would have claimed that he did not voluntarily leave his employment for the purpose of obtaining public assistance.

35. Defendants have applied New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in a manner that created a conclusive presumption that plaintiff's employment was voluntarily terminated in order that plaintiff would be eligible for public assistance and without affording plaintiff a reasonable opportunity to rebut the presumption within the seventy-five day statutory period.

36. Upon information and belief, defendant Reed has maliciously and in bad faith and with the intent to discourage needy persons from obtaining the public assistance they are legally entitled to, approved, tolerated and

fostered the promulgation of memoranda, procedural guidelines, or other policies, customs or usages which direct employees of the Monroe County Department of Social Services to automatically deny public assistance to all needy applicants who apply within seventy-five days after the termination of their employment or reduction in earnings, without regard to evidence supplied by applicants which rebuts the presumption that their employment was voluntarily terminated or earnings reduced for the purpose of obtaining public assistance, and with the knowledge that it is futile for such applicants to obtain timely relief from a denial of assistance through defendant Lavine's "Fair Hearing" procedures. Memoranda, policy statements, procedural guidelines and policies, customs or usages are believed to be promulgated secretly and in bad faith violation of Part 300 of Title 18 of the New York Code of Rules and Regulations, which requires that such materials be published, approved by defendant Lavine, and available to plaintiff and interested persons.

37. Upon information and belief, defendant Lavine has, by his decisions after "Fair Hearings", in bad faith approved, encouraged, tolerated and fostered the application by defendant Reed of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7 as a conclusive presumption that disqualified plaintiff from receiving public assistance for seventy-five days.

38. Plaintiff has suffered hunger, humiliation and stigma resulting from his destitution, great hardship, injury and damage in the amount of $2,000 as a direct result of the operation and enforcement of Section 131(10) of the New York Social Services Law and 18 *N.Y.C.R.R.* § 385.7, and as a direct result of the malicious and bad faith application of this statute and regulation by defendants.

VII.

Legal Claims

39. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations, on their face and as applied to plaintiff, violate the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because they establish a presumption of the motivation and need of applicants for public assistance that is arbitrary, irrational, factually insupportable, and unrelated to the purposes of New York's public assistance program, and because said statute and regulation are impermissibly vague and overbroad in failing to define conduct that constitutes a voluntary termination of employment.

40. Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution because they sanction and disqualify needy persons from receiving public assistance without an opportunity for a prompt hearing which would afford them an opportunity to rebut the statutory presumption. Alternatively, the challenged statute and regulation as applied by defendants violates the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and Section 133 of the New York Social Services Law, because defendants do not accord persons sanctioned and disqualified under the challenged statute and regulation emergency assistance pending the outcome of "Fair Hearings" provided by defendant Lavine.

41. Defendants have applied New York Social Service Law §131(10) and 18 *N.Y.C.R.R.* §385.7 so as to conclusively presume that plaintiff's employment was terminated for the purpose of qualifying for public assistance eligibility, without affording plaintiff an opportunity to rebut the presumption within the seventy-five day statutory sanction period in violation of plaintiff's rights guaranteed by the Fourteenth Amendment to the United States Constitution.

42. Defendants Reed and Lavine are liable to plaintiff Ulysses Westbrook in the amount of $2,000 compensatory damages, and in the amount of $2,500 for punitive damages, pursuant to 42 U.S.C. § 1983, by reason of their malicious and bad faith application of Section 131(10) of the New York Social Services Law in violation of plaintiff's rights to Due Process of Law and Equal Protection of the Law that are guaranteed by plaintiff under the Fourteenth Amendment to the United States Constitution.

Wherefore, Plaintiff respectfully prays on his own behalf and on behalf of all persons similarly situated, that this Court:

(A) Assume jurisdiction of this cause pursuant to 28 U.S.C. § 1343(3);

(B) Convene a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284 to determine this controversy;

(C) Determine by order that this action be maintained as a class action, pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(D) Enter a final judgment pursuant to 28 U.S.C. §§ 2201, 2202 and Rules 54, 57 and 58 of the Fed-

eral Rules of Civil Procedure declaring that Section 131(10) of the New York Social Services Law and Part 385.7 of Title 18 of the New York Code of Rules and Regulations on their face and and as applied are contrary to the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution;

(E) Enter a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their agents, employees, successors and all others acting in concert with them from enforcing or applying the above statute and regulation without providing plaintiffs with prompt hearings and hearing decisions and/or temporary or emergency assistance to plaintiffs pending completion of the hearing process;

(F) Enter a permanent injunction enjoining defendants, their agents, employees, successors and all others in concert with them from enforcing New York Social Services Law § 131(10) and 18 *N.Y.C.R.R.* § 385.7 in such manner as to conclusively presume that an applicant for public assistance had his employment terminated for the purpose of qualifying for public assistance;

(G) Enter a judgment awarding plaintiff and all others similarly situated public assistance grants retroactiive to the date of their applications for assistance;

(H) Enter a judgment in favor of plaintiff Ulysses Westbrook against defendants Reed and Lavine, in their individual capacities, jointly and severally, pursuant to 42 U.S.C. § 1983 and Rule 54

of the Federal Rules of Civil Procedure, awarding plaintiff compensatory damages in the amount of Two Thousand Dollars ($2,000) and punitive damages of Two Thousand Five Hundred Dollars ($2,500);

(I) Award plaintiff his costs, disbursements and fees herein;

(J) Grant plaintiff and all other persons similarly situated such other and further relief as the Court may deem just, proper and equitable.

Dated: April 11, 1974
Rochester, New York

Respectfully submitted,

STEVEN L. BROWN
MONROE COUNTY LEGAL ASSISTANCE CORP.
GREATER UP-STATE LAW PROJECT
Steven L. Brown, of Counsel
Attorney for Plaintiff

(Verified by Ulysses Westbrook, April 11, 1974.)

Notice of Denial of Assistance for 75 Days, Exhibit "A" to Proposed Intervenor's Complaint.

MONROE COUNTY DEPARTMENT OF SOCIAL SERVICES
11 Westfall Road
Rochester, New York 14620

NOTICE OF DECISION
CO-228

The preadded allowance includes food, FULL clothing, utilities, laundry, household furnishings and equipment, linens, appliances, repairs and replacements, personal incidentals, household supplies, children's school expenses and sales taxes. Your MEDICAID IDENTIFICATION CARD entitles you to medical care and services. Be sure to show your ID card to the person who will provide medical care or service.

266503
Case Number

Feb. 26, 1974
Date

To Mr. Ulysses Westbrook
19 Pearl Street
Rochester, N.Y. 14607

This is to inform you of our action in your case. The items checked below apply to you. Please read carefully.

☒ BASIC ASSISTANCE APPLICATION

☐ FOOD STAMP APPLICATION

☐ MEDICAID APPLICATION

You were seen on an emergency basis on 2/22/74. After reviewing your situation, it was decided:

☒ DENIED: Your application has been denied because you were suspended from employment with N.Y.S.

Notice of Denial of Assistance for 75 Days, Exhibit "A" to Proposed Intervenor's Complaint.

Dept. of Corrections. Therefore 75-Day Sanction is invoked.

☐ WITHDRAWN: Your application has been withdrawn at the request of .....

☐ On ....., you will receive a check in the amount of $..... for the period .....

☐ BASIC ASSISTANCE CASE
☐ FOOD STAMPS
☐ MEDICAID

☐ Your case is being closed effective ..... because .....
Medicaid coverage

☐ On ..... your check will be changed from
Date

..... to ..... Reason: .....

.....

UW

If you believe that this action should not be taken, you may request a state fair hearing by telephoning 454-4272 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of the hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why the action should not be taken as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you need help in the fair hearing, contact one of the following community legal services: Legal Aid Society at 232-4090 or Monroe County Bar Legal Assistance Corporation at 325-3444 or 232-5400.

Plaintiff's Notice of Motion for Order Determining Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

TO THE DEFENDANTS:

PLEASE TAKE NOTICE that upon all the papers heretofore filed with this Court in this action and more particularly upon the affidavits of Ronald Milne, Hilary Sohmer, Douglas Streeter, Robert Lee, Joe Beverly, Willie Beverly, Odell and John Beverly, Doug Berky (2 affidavits), Ethel Reid, Edmund Byrnes, Esq., Roy Levee, John Gray, Esq., Allen Phillips, Pat Scarfone and Gerald Norlander, Esq. (2 affidavits), and the exhibits annexed thereto and submitted in support of this motion, and defendants' answers to plaintiffs' interrogatories, plaintiffs will move this Court at a Motion Term, to be held at the United States Courthouse in Room 1106, Foley Square, New York, New York, on the 10th day of May, 1974, at 2:30 p. m. or as soon thereafter as counsel can be heard:

1. For an order determining this action to be a proper class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

The grounds of this motion, as are more fully set forth in plaintiffs' memorandum of points and authorities submitted in support of this motion, are that each of the classes set forth in the amended complaint are proper classes because: (a) each class is so numerous that joinder of all members is impracticable; (b) there are questions of law and fact common to each of the classes; (c) the claims of

the representative plaintiffs are typical of the claims of the classes and it can reasonably be expected that defendants will interpose identical defenses to these claims; (d) The Legal Aid Society of Westchester County, attorney for plaintiffs, will fairly and adequately protect the interests of the class; and (e) defendants have acted and refused to act on grounds generally applicable to the class thereby making appropriate final injunctive and corresponding declaratory relief with respect to the class as a whole.

2. For an order pursuant to Rule 56 of the Federal Rules of Civil Procedure, granting final summary judgment in favor of plaintiff and the class which he represents against the defendants for the declaratory and injunctive relief, prayed for in paragraphs (D), (E), and (F) of the Wherefore Clause of the Amended Complaint, based on the unconstitutionality of New York Social Services Law, § 131(10) and 18 NYCRR, § 387.7 on their face and as applied to plaintiffs.

The grounds of this motion, as are more fully set forth in the memorandum of points and authorities submitted in support of this motion, are that there are no genuine issues of material fact and plaintiffs are entitled to judgment as a matter of law in that New York Social Services Law § 131(10) and 18 NYCRR § 385.7 on their face and as applied to plaintiffs violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Plaintiffs further move that if summary judgment is not rendered in plaintiffs favor for all of the relief prayed for herein, that the Court grant plaintiffs partial summary judgment and, at the hearing on the motion, by examining the pleadings and the evidence before it and by interrogating counsel, ascertain what material facts are actually and in good faith controverted, and thereupon make an order

specifying the facts that appear without substantial controversy and directing such further proceedings in the action as are just.

PLEASE TAKE FURTHER NOTICE, that any opposing affidavits and answering memoranda must be served upon counsel for plaintiffs at least three (3) days before the return date of this motion.

Dated: April 26, 1974, White Plains, New York.

Respectfully submitted,

MARTIN A. SCHWARTZ
The Legal Aid Society of
Westchester County
Martin A. Schwartz, of Counsel
Gerald A. Norlander, of Counsel
Catherine Cronin, of Counsel
Hilary Sohmer, of Counsel
Attorneys for Plaintiffs

Statement Pursuant to Rule 9-G.

Plaintiffs respectfully submit this statement pursuant to Rule 9-G of the General Rules of this Court. The following are the material facts relevant to the determination of this controversy which plaintiffs contend are not in dispute.

A. *Plaintiff Ronald Milne:*

1. Plaintiff Ronald Milne was suspended from his employment as a security guard at Columbia University on November 2, 1973, for alleged misconduct. Prior to his suspension, Milne had been regularly employed for the past 17 years.

2. As a union grievance procedure on November 12, 1973, Milne's employer offered him the opportunity to resign with a clear record or be fired for misconduct.

3. On advice of his union representative, Milne resigned as of November 2, 1973, by a letter dated November 9, 1973.

4. Milne contends that he did not resign for the purpose of qualifying for public assistance.

5. When he had no resources and required aid to pay his rent and buy food, Milne applied for public assistance on November 16, 1973, at the Yonkers District Office of the Westchester County Department of Social Services.

6. Milne was denied public assistance by defendants, their agents and employees on November 16, 1974, in a notice which stated, in part, as follows:

> Your application for public assistance has been denied for the following reasons: As per your application, you resigned from your job at Columbia University on November 2, 1973. A seventy-five day sanction is in effect from November 2, 1973 to January 15, 1974 be-

fore you would be eligible for a public assistance grant.

If you are not satisfied with this decision you have a right to ask for a Fair hearing. If you wish to have a Fair Hearing, you must make your request within sixty days. You may do so by phoning 212-488-5660, or by writing to the State Department of Social Services, 1450 Western Avenue, New York (sic), New York 12203.

7. The seventy-five (75) day sanction was imposed against plaintiff, by defendants, their agents and employees, due to the operation and application of Section 131(10) of the New York Social Services Law, which states, in pertinent part, as follows:

> Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person.

and from application of Part 385 of Title 18 of the New York Code of Rules and Regulations, a regulation authorized, promulgated and enforced by defendant Lavine and applied in Westchester County by defendant Berman, which in pertinent part, provides as follows:

> 385.7 Sanctions
>
> (a) • • •
>
> (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

8. Plaintiff was not offered any opportunity to rebut the presumption contained in the above cited statute and regulations (paragraph "10", *supra*) other than the opportunity to request a "Fair Hearing".

9. Defendant Lavine has established a "Fair Hearing" system under Part 358 of Title 18 *N.Y.C.R.R.*, and his agents regularly hold administrative hearings in Westchester County to determine if Defendant Berman, his agents and employees are acting in compliance with State laws and regulations in making determinations on applications for public assistance. The decisions of Defendant Lavine after "Fair Hearings" are binding on Defendant Berman, his agents and employees.

10. Plaintiff requested an expedited "Fair Hearing" on December 13, 1973.

11. Milne received notification that defendants had scheduled his Department of Social Services "Fair Hearing" on January 9, 1974. This hearing was scheduled twenty-seven (27) days after his request for a "Fair Hearing", and six days prior to the end of the 75 day sanction period.

12. Defendants do not schedule expedited "Fair Hearings" and do not allow any exceptions to the regular scheduling of "Fair Hearings".

13. After plaintiff commenced this action defendant Berman's agents informed Milne at the "Fair Hearing" held on January 9, 1974 that they had changed their decision and would grant him retroactive public assistance from November 16, 1973. Milne informed defendants that he accepted this assistance without prejudice to his rights in this litigation.

14. During Milne's period of disqualification from receiving public assistance from November 16, 1973 to January 9, 1974, he was damaged by hunger, humiliation and stigma resulting from defendants' enforcement of Section 131(10) of the New York Social Services Law.

15. Milne was further damaged and suffered loss because he was never granted a retroactive amount by defendants for the food stamp bonus that he had not received due to his disqualification from November 16, 1973 to January 9, 1974.

16. Milne began receiving unemployment insurance on January 17, 1974, and he returned two (2) public assistance

checks to the Westchester County Department of Social Services after that date. As of April 26, 1974, he was receiving unemployment insurance benefits, although he has received notification that his former employer is appealing the Department of Labor hearing determination that awarded him benefits.

B. *Plaintiff Douglas Streeter:*

17. Douglas Streeter worked as a hop-filler at Life Savers, Inc. in Port Chester, New York from August 30, 1973 to October 15, 1973.

18. Streeter was informed by his employers that the company had a new rule that disallowed persons to have beards. Streeter has sensitive skin and experiences difficulty shaving; he asked if he could use a mask in place of shaving his beard.

19. Streeter's employer informed him that if he didn't shave he would be fired. Being unbale to shave, he did not report to work on or after October 15, 1973.

20. On October 31, 1973, Streeter was destitute and he applied for public assistance at the Port Chester District Office of the Westchester County Department of Social Services.

21. Streeter was denied public assistance under color of Section 131(10) of the Social Services Law.

22. On December 5, 1973, Streeter secured new employment as an orderly at the Port Chester Nursing Home in Port Chester, New York through his own efforts.

23. On December 31, 1973, Streeter was ill when he was scheduled to report for work and he was unable to leave the

house. He requested a friend to call his employer and report his illness. His friend relayed his employer's message to report to the nursing home office on his return.

24. On Friday, January 4, 1974, Streeter returned to the nursing home and was told that he was suspended. When he called again on January 7, 1974, he was told he had terminated his employment by failing to phone in on January 2, 1974.

25. Streeter contends that he did not voluntarily terminate his employment to qualify for public assistance.

26. After termination of his employment, Streeter unsuccessfully sought new employment.

27. On January 13, 1974, Streeter had not paid his January, 1974, rent and he needed funds to buy food. He applied for public assistance at the Port Chester Office of the Westchester County Department of Social Services.

28. On January 16, 1974, a notice was mailed by defendants denying plaintiff public assistance under Section 131(10) of the New York Social Services Law, which stated, in part:

> You were terminated from your job at the Port Chester Nursing Home on December 28, 1973. You are being sanctioned for 75 days and may reapply on April 13, 1974.
>
> If you are not satisfied with this decision, you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing, you must make your request within 60 days. You may do so by phoning (212) 488-6550 or by writing to the State Department of Social Services, 1450 Western Avenue, New York (sic), New York 12203.

29. Streeter did not receive any opportunity to rebut the statutory presumption applied against him, except the "Fair Hearing" offered by defendant Lavine.

30. On January 28, 1974, a Fair Hearing was requested for Streeter. Defendants provide no procedure for expedited "Fair Hearings" and Streeter's hearing was scheduled in the ordinary course of administration.

31. Streeter's "Fair Hearing" was scheduled for February 28, 1974, thirty (30) days after his request.

32. At Streeter's "Fair Hearing" on February 28, 1974, the representative of the Department of Social Services requested an adjournment until this action was completed. Streeter's attorney objected to the adjournment. The Hearing Officer allowed a short adjournment to allow the Westchester County Attorney to appear.

33. On March 4, 1974, Streeter went to the Port Chester District Office of the Department of Social Services and was granted a retroactive check for $117.00 as a result of this Court's temporary order restraining enforcement of Section 131(10) against him. Streeter did not receive a grant for retroactive food stamp bonuses which he did not receive during the month of February due to imposition of the 75-day sanction.

34. Streeter's "Fair Hearing" was finally held on March 20, 1974, fifty (50) days after his request. At his hearing, Streeter attempted to rebut the presumption applied to him that he quit his job to qualify for public assistance.

By April 26, 1974, past the expiration date of the 75-day sanction, defendant Lavine had not rendered a decision after hearing.

C. *Plaintiff Robert Lee:*

35. Robert Lee worked full-time as a tool maker at Jonard Industries, Tuckahoe, New York, until November 18, 1973.

36. On November 18, 1973, Lee was injured in a car accident, and subsequently he was unable to attend work regularly.

37. On or about January 14, 1974, Lee's employment was terminated because of allegedly excessive absences which were allegedly disruptive to his employer's production.

38. Lee was unable to work regularly between mid-November and January, 1974, and he did not receive full pay checks. He fell behind in his rental payments between November 24, 1973 and January 26, 1974.

39. On January 29, 1974, Lee applied for public assistance at the Mount Vernon Office of the Westchester County Department of Social Services. He was in desperate need of assistance since he had no resources and couldn't buy food on January 29 and 30th and 31st, 1974.

40. Lee spoke with a caseworker and her supervisor to request public assistance and he filled out a written application. Although he was totally without resources or means to buy any food or pay his rent, he was not given any temporary or emergency assistance.

41. On January 31, 1974, Lee was denied public assistance and he was told by defendants' employees that he would have to wait seventy-five (75) days in order to get any public assistance, regardless of his need. Lee's denial notice stated as follows, in pertinent part:

> Your application for public assistance has been denied for the following reasons:
>
> Your employment was terminated due to the following reasons:
>
> Combination of excused and unexcused lateness and absenteeism.
>
> If you are not satisfied with this decision you have the right to ask for a "Fair Hearing." If you wish to have a "Fair Hearing" you must make your request within 60 days. You may do so by phoning 212 488-6550 or by writing to the State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

42. Lee was told by defendants' employees that nothing could be done to help him, and he was referred to the Legal Aid Society of Westchester County.

43. The sole opportunity offered to Lee to rebut the statutory presumption was the opportunity to request a "Fair Hearing", as stated in his denial notice.

44. On January 31, 1974, Lee saw an attorney from the Legal Aid Society who loaned him $3.00 in order to get something to eat.

45. A "Fair Hearing" was requested for Lee on February 5, 1974, and was not scheduled until April 4, 1974, after the expiration of the statutory 75-day sanction.

D. Proposed Intervenor Brownlee:

46. Proposed intervenor Brownlee was employed by a plastics company as a receiving clerk until March 2, 1973. On March 3, 1973, after he returned to work after an excused absence of two days, he was discharged by his employer because a stock of chemical used in products had been exhausted during his absence, and he had not reported the depletion in time for re-supply.

47. On April 18, 1973, he applied to the Westchester County Department of Social Services for public assistance. His application was denied in a letter dated April 18, 1973, which stated that a 75-day sanction had been imposed on him.

48. Plaintiff Brownlee requested a fair hearing on April 18, 1973. This hearing was scheduled and held on May 8, 1973. On May 22, 1973, or approximately five days after the 75-day period had run, defendant Lavine rendered his "Decision After Fair Hearing".' It stated:

> "(3) Appellant, on March 13, 1973, was discharged from his employment for failing to maintain a supply of a certain solvent which resulted in a production shutdown on that date.
>
> (4) . . . Section 385.7 of the Regulations of the State Department of Social Services provides that a person who voluntarily terminates his employment or reduces his earning capacity for the purpose of qualifying for assistance shall be disqualified from receiving assistance for 75 days thereafter. . . . On the credible evidence, the appellant was discharged from his employment under circumstances which constitute voluntary termination of employment within the meaning of the aforecited regulation. Accordingly, the determination of the agency is proper."

E. Proposed Intervenor Reid:

49. Proposed intervenor Reid was employed by Homemakers Upjohn and Health Care Services until October 21, 1973. On October 11, 1973, she had informed her employer that she had to go to Philadelphia in order to be with her mother who was undergoing open heart surgery at that time. Her employer informed her to call him when she returned. When she returned, her employer informed her that she had been replaced.

50. One week thereafter, plaintiff Reid was destitute, without funds for food and rent. On October 31, 1973, she applied for assistance at the Westchester County Department of Social Services. Her application was denied. She applied again on November 23, 1973. This application was denied by letter from the Westchester County Department of Social Services dated November 27, 1973, which stated:

> You are sanctioned for 75 days from 10/11/73, the day you left your job. However, you may reapply on 12/24/73.

51. Plaintiff's counsel requested a state fair hearing on November 29, 1973. This hearing was scheduled and held on December 14, 1973. On February 8, 1974, or approximately two weeks after the end of the 75-day sanction, defendant Lavine render his "Decision After Fair Hearing". The decision stated:

> . . . (4) The appellant left her employment voluntarily on October 11, 1973. Subsequent thereto, her application for public assistance of October 23, 1973 was denied by the agency on November 27, 1973.
>
> Section 385.7 of the Regulations provide that an applicant for a grant of home relief who voluntarily terminated employment shall be disqualified from re-

ceiving assistance for 75 days thereafter. The agency properly denied the appellant's application.

F. Other Applicants for Intervention:

1. Roy Levee

52. Roy Levee sought to intervene in this action after his application for assistance was denied by the New York City Department of Social Services on January 15, 1974. His notice of denial stated as follows:

> You have provoked the firing of your position and are therefore ineligible for public assistance for 75 days.

53. Levee was also offered a "Fair Hearing", but his request for an expedited hearing made on January 16, 1974, was denied. On January 21, 1974, the Court made an order to show cause why Levee should not be granted leave to intervene, and temporarily enjoined the denial of assistance to Levee under the challenged provisions.

54. Levee subsequently received aid that prevented his eviction, which had previously been denied. On the return date of Levee's motion to intervene, counsel to the New York City Department of Social Services announced that his agency would not deny assistance to Levee under the challenged provisions, and Levee's motion to intervene was denied.

2. Joe Beverly, Willie Beverly, Odell Beverly, and John Beverly:

55. Joe, Willie, Odell and John Beverly, four brothers, left their employment at a rural poultry farm in Ontario County, New York, after they had been evicted from their home and were unable to find suitable housing in the area. Joe Beverly sought public assistance from the Ontario

County Department of Social Services for himself and his brothers after they became destitute.

56. By notice dated February 5, 1974, their application for assistance was denied. The notice stated as follows:

> Your application for public assistance has been denied because you quit your job without good cause.

57. The Beverly brothers requested an expedited fair hearing on February 26, 1974; they sought leave to intervene as plaintiffs by an order to show cause made returnable March 22, 1974. A fair hearing was held March 14, 1974, denying assistance to Joe Beverly under the challenged provisions.

58. An order allowing intervention of the Beverly's has been submitted pursuant to the Court's directive of March 27, 1974.

3. Ulysses Westbrook

59. Ulysses Westbrook was disqualified from receiving assistance under the challenged provisions by the Monroe County Department of Social Services on February 26, 1974. Westbrook applied for assistance after he lost his job on February 6, 1974 as a prison correctional officer due to his alleged off-duty misconduct.

60. The notice from the Monroe County Department of Social Services denying Westbrook's application for assistance stated:

> You were seen on an emergency basis on 2/22/74. After reviewing your situation it was decided: Your application has been denied because you were suspended from your employment with N.Y.S. Dept. of

> Corrections. Therefore, 75-day sanction is invoked. . . . If you believe this action should not be taken, you may request a state fair hearing . . .

Westbrook was not provided an expedited fair hearing that was requested by his counsel.

61. Westbrook sought to intervene as a plaintiff by an order to show cause made returnable April 19, 1974. On the return date, counsel to defendant Lavine stated that the decision of the Monroe County Department of Social Services, denying Westbrook aid under the challenged provisions, had been reversed by state officials. Westbrook's motion to intervene was then denied by order dated April 24, 1974.

G. Other Members of The Proposed Class:

1. Pat Scarfone

62. Pat Scarfone, a member of the proposed class of plaintiffs, was denied assistance under the challenged provisions by the Westchester County Department of Social Services. Scarfone's denial notice dated December 12, 1973, stated as follows:

> Your application for public assistance has been denied for the following reasons: You were fired from your job due to the fact that you didn't follow instructions. Therefore, you are ineligible for public assistance for 75 days. Since you were receiving aid up until 12/31/73, you are not eligible for public assistance until 3/14/74. If you are not satisfied with this decision, you have the right to ask for a Fair Hearing.

63. Scarfone requested a "Fair Hearing" by a letter dated December 13, 1973. A hearing was not held until

January 10, 1974. The Decision After Fair Hearing reversed the decision of the local agency denying Scarfone assistance. This decision, however, was not rendered until February 20, 1974, more than sixty days after Scarfone's request.

64. As a result of the denial of a timely opportunity to rebut the presumption, Scarfone was compelled to move from his apartment in Mount Vernon, New York, though he wanted to stay. (See Affidavit of Pat Scarfone in Support of Plaintiffs' Motions).

2. Allen Phillips

65. Allen Phillips, a member of the proposed class of plaintiffs, was denied assistance under the challenged provisions on February 21, 1974 by the Westchester County Department of Social Services, although he was destitute. His attorney immediately requested an expedited fair hearing to contest the denial of assistance.

66. A denial notice provided to Phillips stated as follows:

> As it was explained to you at our last meeting of approximately February 21, 1974, you provoked your own discharge. This means that you may not reapply until 75 days from the date you were discharged . . . If you are not satisfied with this decision, you have the right to ask for a fair hearing . . .

67. A fair hearing was not scheduled for Phillips until March 12, 1974. In the meantime, however, Phillips was arrested and jailed for alleged shoplifting, and he was unable to attend his hearing on the day it was scheduled. The hearing was rescheduled for April 4, 1974, and was held on that date.

68. At the hearing, Phillips testified that he had worked all his life as a dishwasher or unskilled laborer, that he had received public assistance in November, 1973 after he was unable to work due to an injury, that he had found employment on his own initiative and requested that his Home Relief case be closed, and that he then was discharged for being late for work one day.

69. A decision after the hearing has not yet been rendered by defendant Lavine. Meanwhile, Phillips has been unable to pay his rent and provide for his everyday needs. (See Affidavit of Allen Phillips in Support of Plaintiffs' Motions.)

H. The State's Fair Hearing Procedures:

70. Defendants have up to 90 days from the date of the request for a fair hearing to render and implement a fair hearing decision. 45 C.F.R. § 205.10. This regulation changed the requirement from the prior requirement of 60 days to the present 90 day requirement.

71. A recent decision of this Court substantiates that (1) defendants have not been able to comply with this 90 day requirement and (2) it is likely that noncompliance will continue in the future, thereby necessitating a recent award of injunctive relief in an attempt to secure compliance. *Nelson* v. *Sugarman,* —— F.Supp. —— (S.D. N.Y. 71 Civ. 1719 December 19, 1973). See also, the prior reported opinion in *Nelson* v. *Sugarman,* 361 F.Supp. 1132 (S.D. N.Y. 1973).

72. Defendant Lavine has no expedited fair hearing procedure for persons disqualified from receiving assistance under Section 131(10) of the New York Social Services Law.

73. No assistance was provided to plaintiffs after they were given their notices of disqualification under Section 131(10) of the New York Social Services Law while they awaited their hearings.

Dated: April 24, 1974, White Plains, N. Y.

.....

The Legal Aid Society of
Westchester County
Martin A. Schwartz, of Counsel
Gerald Norlander, of Counsel
Catherine Cronin, of Counsel

Affidavit of Ronald Milne in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COUNTY OF WESTCHESTER }
STATE OF NEW YORK } ss.:

RONALD MILNE, being duly sworn deposes and says that:

1. I reside at 157 Saratoga Avenue, Yonkers, New York, and I am the named plaintff in the above-entitled action. I have personal knowledge of the facts stated herein, and I make this Affidavit in support of plaintiffs' motion for a class action determination and summary judgment.

2. On November 2, 1973, I was suspended from my job as a security guard at Columbia University, New York, for alleged misconduct. Prior to this suspension, I had been working for seventeen (17) years.

3. I was a member of Transportation Worker's Union, Local 241 through which I contested the suspension at grievance procedures held on November 5 and November 12, 1973.

4. At the grievance procedure held on November 12, 1973 my employer offered me the choice of resigning as of November 2, 1973 with a clear record or being discharged for misconduct.

5. My union representative advised me to resign because it would look better on my record and it would make it easier for me to find another job.

6. I followed my union's advice by tendering a letter of resignation as of November 2, 1973 which letter was dated November 9, 1973. (A copy of this letter is annexed hereto as Exhibit "A").

7. I did not leave my job in order to qualify for public assistance.

8. I did not provoke my discharge or reduce my earning capacity in order to qualify for public assistance.

9. On November 16, 1973, I had exhausted my savings, was unable to find a new job and I was unable to provide myself with the necessities of food and lodging. I applied for unemployment compensation at the New York State Department of Labor.

10. On November 16, 1973 I went to Yonkers District Office of the Westchester County Department of Social Services to apply for public assistance which I expected to receive due to my needs and lack of resources.

11. On November 16, 1973, I was denied public assistance by defendants, their agents and employees when I was tendered a notice which read in part:

> Your application for public assistance has been denied for the following reasons: As per your application, you resigned from your job at Columbia University on November 2, 1973. A seventy-five day sanction is in effect from November 2, 1973 to January 15, 1974 before you would be eligible for a public assistance grant.
>
> If you are not satisfied with this decision you have a right to ask for a Fair Hearing. If you wish to have a Fair Hearing, you must make your request within

sixty days. You may do so by phoning 212-488-5660, or by writing to the State Department of Social Services, 1450 Western Avenue, New York (sic), New York 12203.

(A copy of this notice is annexed hereto as Exhibit "B").

12. I was not given any reason for denial of public assistance by the Department of Social Services other than the reason stated in the above-quoted notice of denial.

13. The seventy-five (75) day sanction which defendants applied to me which disqualified me from receiving public assistance, arises from the operation and application of the sanction and a presumption that I left my job to qualify for public assistance, contained in Section 131(10) of the New York Social Services Law and Section 385.7 of Title 18 of New York Code Rules and Regulations.

14. On November 29, 1973 I received a notice of determination from the New York State Department of Labor that I was denied unemployment compensation because I had either provoked my discharge or alternatively caused loss of employment by misconduct. I requested that a hearing at the Department of Labor be granted to me on this determination.

15. On November 29, 1973, I went to the Yonkers office of the Legal Aid Society to inform Ms. Sohmer, an attorney therein, of the determination of the Labor Department and to seek assistance to meet my needs for food and lodging.

16. By December 13, 1973, I was unable to secure any public assistance from defendants and I informed my attorney that I wanted to request a "Fair Hearing" to question the determination of defendants denying me public

assistance. My attorney requested the "Fair Hearing" on December 13, 1973.

17. On December 19, 1973, my attorneys filed the above mentioned case in the United States District Court for the Southern District of New York.

18. On January 2, 1974, I was notified by mail that a "Fair Hearing" had been scheduled for January 9, 1974. This hearing was scheduled twenty-seven days after the request for a "Fair Hearing" and fifty four-days after I was disqualified from receiving public assistance and six days prior to the expiration of my seventy-five (75) day sanction on January 15, 1974.

19. I was not offered any other opportunity by the Department of Social Services to present evidence to rebut the presumption that I left my job to qualify for public assistance.

20. At such hearing I intended to show that the application by the Department of Social Services of the presumption that I quit my job to qualify for public assistance had no reasonable realtion or connection to the actual facts and circumstances surrounding my termination of employment, which were:

a) my salary prior to "resignation" was in excess of any assistance I might have received from public welfare;

b) I had worked for seventeen years prior to this "resignation";

c) my employer offered me a choice of resigning with a clean record or being discharged for misconduct;

d) my union representative advised me to resign;

e) I chose to resign in order to be able to get another job.

21. At the "Fair Hearing" held on January 9, 1974, the Department of Social Services informed me that they had changed their decision and would give me retroactive public assistance from the date of my original application for public assistance. They did not give me any retroactive value for the Food Stamps that I had not been able to purchase during my disqualification period.

22. At this hearing I informed the representatives of the Department of Social Services that I would accept such retroactive assistance without prejudice to any of my rights in this action.

23. During my period of disqualification from receiving welfare assistance from defendants and prior to the date of my Department of Social Services "Fair Hearing", I suffered hunger, humiliation and stigma resulting in my destitution great hardship and injury.

24. Pursuant to my request for a hearing concerning denial of unemployment benefits from the Labor Department, a hearing was held on December 21, 1973 at 9 o'clock A.M. at the offices of the New York State Department of Labor at 2 World Trade Center, New York, New York which I attended. I received a decision from that hearing in my favor dated January 3, 1974, which stated that I was entitled to unemployment insurance since I had not provoked my discharge or caused my termination by misconduct. (A copy of that notice is annexed as Exhibit "C").

25. I received my first unemployment check on January 17, 1974, which included one week of retroactive unemployment compensation benefits.

26. I returned two public assistance checks of $79.00 each to the Yonkers District office of the Department of Welfare after receipt of unemployment benefits on January 17, 1974. I am presently receiving unemployment benefits which are my only source of current income.

27. I have received notice that my former employer is currently appealing the deterimnation from the Labor Department hearing held on December 21, 1973. If they succeed in that appeal and I am unable to secure employment at that time I will be forced to apply once again for public assistance.

28. The presumption applied to me by defendants was arbitrary and irrational and was applied without affording me an opportunity for a meaningful opportunity to rebut the presumption.

WHEREFORE your deponent respectfully prays that this Court grant plaintiff's motion for a class action determination and summary judgment.

(Sworn to by Ronald Milne, March 7, 1974.)

Letter of Resignation, Exhibit "A" and Notice of Denial of Public Assistance, Exhibit "B" to Affidavit of Ronald Milne are printed *supra* as Exhibits "A" and "B" to Amended Complaint.

Notice from Decision of Fair Hearing, Exhibit "C" to Affidavit of Ronald Milne.

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE REFEREE SECTION
Two World Trade Center
New York, N. Y. 10047

In the Matter of:

Ronald Milne
157 Saratoga Avenue Apt. 3B
Yonkers, New York 10705

Local Office #83
Department of Labor
70 Ashburton Avenue
Yonkers, New York 10701

Columbia University
Manhattan Branch
116th Street & Amsterdam Avenue
New York, New York

N.
Referee #73-50945
S.S.A. #093-24-1034

DECISION MAILED AND DULY FILED IN THE DEPARTMENT OF LABOR ON JANUARY 3, 1974

Associated Services Corp.
60 East 42nd Street
New York, New York 10017

FINDINGS OF FACT: A hearing was held at which claimant and a representative of the employer appeared and testified. A written statement was submitted on behalf of the Industrial Commissioner in lieu of an appearance.

Notice from Decision of Fair Hearing, Exhibit "C" to Affidavit of Ronald Milne.

By initial determination effective November 3, 1973, claimant was disqualified because of loss of employment due to misconduct in connection therewith. By alternate initial determination effective the same date, claimant was disqualified because of voluntary leaving of employment without good cause by provoking his discharge.

Claimant, a guard, worked for the employer from August 21, 1972, to November 2, 1973, when he was discharged because the employer felt that he was intoxicated and not at his post during working hours. Claimant was neither intoxicated nor absent from his post.

OPINION: It is significant to note herein that the employer presented no evidence of substantative force and probative effect to establish its contention that claimant was intoxicated and off his post during working hours. The unrefuted evidence adduced at the hearing established that claimant was neither intoxicated nor off his post on the date at issue. Therefore, it cannot be reasonably argued that claimant rendered himself subject to the disqualification of misconduct or voluntary leaving of employment without good cause by provoking his discharge.

DECISION: The initial determinations are overruled.

/s/ JAMES C. BRETTON
Referee

mm

Affidavit of Hilary Sohmer in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

HILARY SOHMER, being duly sworn, deposes and says that:

1. I am an attorney, duly licensed to practice law in the Commonwealth of Massachusetts, and am associated at present with the Legal Aid Society of Westchester County in the Yonkers Branch Office.

2. I make this Affidavit in support of plaintiffs' motions for a class action determination and summary judgment and I have personal knowledge of the facts stated herein.

3. On or about November 16, 1973, I interviewed Ronald Milne, plaintiff herein, at my office concerning his disqualification from receiving Welfare assistance on November 16, 1973 from the Yonkers District Office of the Westchester County Department of Social Services.

4. On or about Monday, November 19, 1973, I phoned Mr. Stuart Rosenthal, Senior Supervisor of Casework at the Yonkers District Office of the Westchester County Department of Social Services to determine the reasons for Mr. Milne's disqualification, and whether any public assistance could be granted to him due to his lack of money and need for emergency assistance.

5. I was informed by Mr. Rosenthal that Mr. Milne was denied public assistance due to the application to him of Section 131(10) of the New York Social Services Law which provides as follows:

> Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by the person.

and Section 385.7 of 18 *NYCRR*, a regulation authorized, promulgated and enforced by defendant Lavine, which provides in pertinent part, as follows:

> 385.7 Sanctions
>
> (a) • • •
>
> (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or requests an increase in his grant, within 75 days after

> voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

6. I was also informed by him that no assistance could be given to Mr. Milne during the seventy-five (75) day disqualification imposed by the above cited statute and regulation. No emergency aid, no short term assistance and no predetermination grant would be given during that period despite Mr. Milne's needs.

7. On or about November 29, 1973, Mr. Milne returned to my office and informed me that his application for unemployment compensation, which was filed November 16, 1973, had been denied by the New York State Department of Labor.

8. On or about December 4, 1973, I once again phoned Mr. Rosenthal at the Yonkers District Office of the Department of Welfare and explained the dire circumstances of Mr. Milne's needs and told him Mr. Milne had no source of assistance since his unemployment application was denied by the New York State Department of Labor.

9. Mr. Rosenthal told me that if the Unemployment Section of the Department of Labor finds that an applicant is disqualified from receiving unemployment compensation, then, the Department of Welfare applies a conclusive presumption to that same person that he left his job to procure Welfare and they apply the seventy-five (75) day

disqualification to deny him public assistance. He reiterated that no short term or predetermination or emergency grant is made during the disqualification period. In response to my question, he also told me no expedited "Fair Hearing" procedure existed.

10. I proceeded to call the central administrative office of the Westchester County Department of Social Services in order to determine if any action could be taken to meet Mr. Milne's needs. I spoke to a Ms. Baird who directed me to speak to Mr. Schmitt.

11. On or about December 5, 1973, I spoke to Mr. Joseph Schmitt, Esq. who is Deputy Commissioner for Legal Affairs of the Westchester County Department of Social Services and I explained Mr. Milne's situation and current needs. He informed me that nothing could be done by the Department of Social Services to assist Mr. Milne. He reasserted that no monetary assistance was available and that no procedure existed for an expedited "Fair Hearing" for Mr. Milne. He advised me that he thought Mr. Milne should get unemployment compensation.

WHEREFORE, deponent respectfully prays that this Court grant plaintiff's motion for class action and summary judgment.

(Sworn to by Hilary Sohmer, March 6, 1974.)

Affidavit of Douglas Streeter in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

DOUGLAS STREETER, being duly sworn, deposes and says that:

1. I reside at 435 North Main Street, Port Chester, New York. I am a plaintiff in the above-captioned action and I make this affidavit in support of plaintiffs' motions for class action determination and summary judgment and have personal knowledge of the facts stated herein.

2. I attended Bowie State College in the State of Maryland from September, 1970 to June, 1973, where I majored in Art. I did not graduate since I hadn't sufficient funds.

3. I returned to Port Chester, New York in June, 1973, to find a job, and on August 30, 1973, I secured employment as a hop-filler at Life Savers, Inc. in Port Chester, New York.

4. I worked there until October 15, 1973, at which time I was told that the Company had passed a new rule for sanitary reasons that employees could not have mustaches, beards, goatees or sideburns if they worked on the assembly lines.

5. Since I have extremely sensitive skin and have difficulty shaving, I requested that I be allowed to wear a mask

in place of shaving my beard. On October 14, 1973, my supervisor told me that if I didn't shave the beard, I needn't come in on October 15, 1973.

6. Since I could not shave, I knew I would be fired and did not report to work at Life Savers, Inc. on October 15, 1973, and began to look for a new job.

7. On October 31, 1973, I applied for public assistance at the Port Chester District Office of the Department of Social Services to help meet my needs for food and lodging.

8. On October 31, 1973, I received a written notice from the Department of Social Services that my application for public assistance had been denied because I had terminated my employment but that I would be eligible to reapply for public assistance after a sanction period of seventy-five (75) days had passed.

9. I continued to look for employment and was unable to pay my November, 1973 rent.

10. On December 5, 1973, I secured a job at the Port Chester Nursing Home, Port Chester, New York as an orderly at $97.00 per week.

11. On December 31, 1973, I was to report to work, but was ill with a fever, and requested a friend, Ms. O'Neil, to call my job and report my illness. She did so and told me that I must report to the nurses' station upon recovery.

12. On Friday, January 4, 1974, I returned to work, picked up my check and was told that I had been suspended.

13. On January 7, 1974, I went to the nurses' office and was told I had terminated my employment by failing to call

on January 2, 1974. I explained my illness and phone call on December 31, 1973, but was informed that further information could be gotten from Mrs. Horonimek, my supervisor, who was unavailable when I tried to call for four days.

14. I did not voluntarily leave my employment to qualify for public assistance.

15. I did not attempt to reduce my earning capacity to qualify for public assistance.

16. I have been attempting to find new employment since I was terminated but have been unsuccessful.

17. On January 13, 1974, I had not paid my January, 1974 rent and I was in need of money to buy food and other necessities. I once again applied for public assistance at the Port Chester District Office of the New York State Department of Social Services.

18. On January 14, 1974, I applied for Unemployment Insurance at the Port Chester District Office of the New York State Department of Labor.

19. On January 17, 1974, I was notified in writing, by the Department of Social Services, that my application for public assistance was denied. The notice, dated January 16, 1974, stated, in pertinent part:

> You were terminated from your job at the Port Chester Nursing Home on December 28, 1973. You are being sanctioned for 75 days and may reapply on April 13, 1974.
>
> If you are not satisfied with this decision, you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing, you must make your request within 60 days. You may do so by phoning (212) 488-6550 or by writing to the State Department of Social Services, 1450 Western Avenue, New York (sic), New York 12203.

(A copy of that notice is annexed hereto as Exhibit "A").

20. I was not given any reason other than the one stated above for denial of public assistance by defendants.

21. The seventy-five (75) day sanction applied to me by defendants arises from the application to me of Section 131(10) of the New York Social Services Law and Section 385.7 of 18 *N.Y.C.R.R.* which contain a presumption that I terminated my job to qualify for public assistance.

22. I did not receive any opportunity, other than that stated in the above-quoted notice (paragraph "21" *supra*), to rebut the statutory presumption being applied against me.

23. On January 23, 1974, I went to the Carver Center, a private social agency in Port Chester, to seek assistance. I spoke to a Ms. Neimeyer who called the Port Chester District Office of the Department of Social Services to determine if any aid could be given to me. Since nothing could be done for me at Welfare, she called the Legal Aid Society of Westchester County and made an appointment for me on January 24, 1974, in the New Rochelle Branch Office.

24. On January 24, 1974, I went to the Legal Aid Society office. My attorney advised me to request a "Fair Hearing" on the denial of assistance but that such hearing might take four weeks to be scheduled. She advised me

to proceed for intervention in the above-entitled action and I signed an affidavit for a motion for intervention.

25. On January 28, 1974, I requested a "Fair Hearing" by phone. At such hearing I intended to show that the application of the presumption by defendants to my case had no rational connection or relation to the actual facts of my termination from employment and that I did not terminate my employment in order to obtain public assistance.

26. This Court granted an order on January 25, 1974, by which I was to receive temporary emergency assistance from the Department of Social Services. I received such assistance from the Port Chester Office and was given $155.00 toward my rent for January and $11.00 to buy food for ten (10) days, which aid continued until February 28, 1974.

27. On February 7, 1974, I received a determination from the New York State Department of Labor stating that I was disqualified from receiving unemployment insurance because I had failed to call my job when I was out sick and because I had not accumulated the required twenty (20) weeks to qualify for unemployment insurance. No opportunity to request a hearing was given to me because of the nineteen (19) weeks disqualification.

28. My "Fair Hearing" was held on February 28, 1974, thirty (30) days after my "Fair Hearing" request. The representative of the Department of Social Services requested an adjournment until the above-captioned action was completed. My attorney objected to the adjournment because the original determiantion of the Department, that I left my job to qualify for Welfare assistance, had not been revoked by the Department and I had a right to a determination on that issue. She also stated that the Court order for temporary assistance did not have any

bearing on the scheduling of my "Fair Hearing." The Department indicated that the Westchester County Attorney involved in the above affirmed matter was not present and would like to appear at my "Fair Hearing."

29. On February 28, 1974, the Hearing Officer allowed an adjournment only to allow the Westchester County Attorney to appear. He also instructed the Department of Social Services that the amount of temporary aid I was receiving from the Department of Social Services was insufficient and I must receive a regular public assistance allotment retroactive to January 25, 1974, the date of this Court's order. The representative of the Department said an error was made and I would receive a retroactive grant.

30. On March 4, 1974, the Department of Social Services granted me a retroactive check for $117.00, which to my best knowledge and belief, does not include a grant for retroactive value of food stamps which I was not able to purchase during the month of February because of the Department of Social Services' error.

31. My "Fair Hearing" was held on March 20, 1974, and I attempted to rebut the presumption applied to me by the Department of Social Services that I quit my job to qualify for public assistance.

32. I was damaged during the period of disqualification prior to this Court's order for emergency assistance in that I did not have sufficient funds for food, or other necessities and I was subject to stigma and humiliation.

WHEREFORE, your deponent respectfully prays that this Court grant plaintiffs' motions for a class action determination and summary judgment.

(Sworn to by Douglas Streeter, March 20, 1974.)

Notice of Denial of Public Assistance, Exhibit "A" to Affidavit of Douglas Streeter.

COUNTY OF WESTCHESTER
DEPARTMENT OF SOCIAL SERVICES

DIVISION OF FAMILY AND CHILD SOCIAL SERVICES

Date: 1/16/74

Mr. Douglas Streeter
435 N. Main Street
Port Chester, New York

Dear Mr. Streeter,

Your application for public assistance has been denied for the following reasons:

You were terminated from your job at the Port Chester Nursing Home on 12/28/73. You are being sanctioned for 75 days and may re-apply on 4/13/74.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, New York, New York 12203.

Sincerely,

Hanim W.
Name

Eligibility Worker
Title

Affidavit of Robert C. Lee in Support of Motions Is Printed *supra* With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Robert C. Lee.

Affidavits of Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly, and Doug Berky in Support of Motions Are Printed *supra* With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Joe Nathan Beverly, Odell Beverly, and John Beverly.

Supplemental Affidavit of Doug Berky in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK)
COUNTY OF STEUBEN) ss.:

DOUG BERKY, being duly sworn, deposes and says:

1. I am a VISTA Volunteer assigned to Project Reach in Cohocton, Steuben County, New York and work primarily in Ontario County, New York.

2. I am fully familiar with the facts and circumstances surrounding the application for public assistance of the

applicants for intervention, Joe Nathan Beverly, Willie Beverly, Odell Beverly and John Beverly.

3. On Thursday, March 14, 1974 I represented the four Beverly brothers at a fair hearing held by the New York State Department of Social Services in Canadaigua, New York to review the denial of assistance to the four brothers. At the hearing, the Ontario County Department of Social Services (hereinafter the agency) maintained that the hearing should be restricted to Joe Nathan Beverly because he was the only one of the four who actually completed an application form. Even though I pointed out that all four brothers asked for assistance, it was decided that the hearing should be restricted to Joe Nathan Beverly, apparently because the agency did not permit the four brothers to fill out application forms on their first visit.

4. The agency was represented by their attorney, a Mr. Harrison Dawes of Canadaigua, who produced a witness from the agency who testified that if the Beverly brothers had retained their previous employment their income would have been adequate to provide for their needs. The agency's other witness was a Mr. Vanepes, the Vice-President of the company the Beverlys worked for. He testified that the termination of the Beverlys' employment was a purely voluntary act on the part of the Beverlys. In fact, he testified that work was still available on the farm for all four brothers and that Mr. Emerson, who runs the farm, even offered an advance from their wages to pay the first month's rental of a trailer which was available at time employment was terminated.

5. The agency introduced no evidence of the purpose for which that Beverlys left their employment, but rested

its case entirely on the presumption established by Section 131(10) of the New York Social Services Law.

6. In presenting the Beverlys' case, I tried to show that they left their jobs because of the lack of local housing and the lack of transportation. However, when I attempted to introduce evidence of the purpose of the termination of their employment, I was reminded that this was not the issue because once it is determined that the termination of employment is voluntary, it is presumed that the purpose of the termination is to qualify for public assistance. I was not advised that this presumption could be rebutted.

7. At the close of the hearing, I was told by the hearing officer that no decision could be expected for thirty days, but that the Beverlys could reapply after the expiration of the 75 day sanction period.

8. In the meantime, the Beverlys' situation has become more desperate. They and the friends who put them up were evicted from the apartment where they were staying in Canandaigua and they have had to spend the past several days on the street and have spent the past several nights in different places each night.

9. Upon information and belief, the Ontario County Department of Social Services has still refused to act even when made aware of this situation.

(Sworn to by Doug Berky, March 21, 1974.)

Affidavit of Ethel Reid in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORKN
COUNTY OF WESTCHESTER } ss.:

ETHEL REID, being duly sworn, deposes and says:

1. I am a member of the class proposed in the above-entitled action and I make this affidavit in support of plaintiffs' class action for declaratory and injunctive relief and damage against the defendants; I make this affidavit to show how, in my case, the defendants applied the law and regulation, which are being challenged by this class action.

2. I am an adult citizen of the United States and of the State of New York, and I live at 8 Ingram Street, Upstairs Apartment, Yonkers, New York (and my mailing address is c/o Mrs. Wilson, 8 Knowles Street, Yonkers, New York).

3. I was employed by Homemakers Upjohn Home and Health Care Services, 470 Mamaroneck Avenue, White Plains, New York.

4. On October 11, 1973, I informed my employer that I had to go to Philadelphia, Pennsylvania in order to be with my mother who was undergoing open heart surgery at that time. My employer told me to call him when I

returned from Philadelphia so that I could then resume employment. The reason which I gave my employer was not only true but was the sole motivation for my action of temporarily leaving employment.

5. On October 21, 1973, I returned to Yonkers, New York and on the following day, I informed my employer of my return. I was told that I had been replaced and no other work was available.

6. Within about one week, I was in the position of having no money for the necessities of life and owed my landlord, from whom I had rented a furnished room, the sum of $100.00. I then sought welfare assistance and unemployment insurance benefits.

7. On October 31, 1973, I applied for public assistance from the Westchester County Department of Social Services (hereafter "Westchester DSS"). My application was denied for the reasons set forth in a letter from Westchester DSS, dated October 31, 1973 (a copy of the letter is annexed hereto as Exhibit "A").

8. On that same day, October 31, 1973, I also went to the Yonkers, New York office of the New York State Department of Labor, Unemployment Insurance Division (hereafter "Unemployment office"). I was told to return with paystubs, Social Security Card, and an Identification card with a picture attached.

9. Within two days thereafter, and before I got the aforesaid items together in order to return to the Unemployment office, my landlord locked me out of my leased premises because I was not able to pay rent. (Thereafter, on November 12, 1973, the landlord gave me the paystubs and Identification card). A friend of mine, a welfare re-

cipient, allowed me to move in with her and she gave me food. I was unable to give my friend any money for food or lodging and I had to borrow it from her.

10. On November 20, 1973, I returned to the Unemployment office with the paystubs and Identification card. I was told that I would be able to receive some benefits as soon as I had procured a replacement for the Social Security Card, which I could not find.

11. On November 23, 1973, I returned to Westchester DSS to apply again for public assistance. My application was again denied for the reason set forth in a letter from Westchester DSS, dated November 27, 1973 (a copy of the letter is annexed hereto as Exhibit "B").

12. On or about November 29, 1974, I asked an employee of the Legal Aid Society of Westchester County to request a Fair Hearing by making a telephone call to the defendant New York Department of Social Services, Albany, New York (hereafter "NYS DSS"). Upon information and belief, such telephone call was made on November 29, 1973. Also, on a letter of transmittal of the Fair Hearing decision from NYS DSS, the dates of request for the Fair Hearing is noted as November 29, 1973 (a copy of this letter is annexed hereto as Exhibit "C").

13. On December 14, 1973, the Fair Hearing was held with documents introduced and testimony taken. On February 8, 1974, a Decision After Fair Hearing was issued by defendant Abe Lavine, Commissioner of N.Y.S. D.S.S. (a copy of the Decision is annexed hereto as Exhibit "D"); the Decision affirmed the determination of the Westchester D.S.S., which had denied my application for public assistance.

14. My income during the entire period dating from my termination from employment on October 22, 1973 until the present date is as follows:

A. I finally received benefits from the Unemployment office in the total amount of approximately $222. I received this amount during January, 1974, and that amount has been the extent of benefits from the Unemployment office.

B. I was rehired by Homemakers Upjohn Home and Health Care Services on December 12, 1973, and since December 21, 1973, I have been receiving take-home pay in the amount of $48.40 per week.

C. I received no assistance from the Westchester D.S.S.

15. Before I had received any income from the sources described in paragraphs 14 (A) and (B) above, it was especially damaging to me to have received no income from the Westchester D.S.S. because I was totally destitute and really needed some money (see paragraphs 6 and 9 above).

(Sworn to by Ethel Reid, March 21, 1974.)

Letter to Reid Affidavit from Westchester Department of Social Services to Ethel Reid; Exhibit "A".

COUNTY OF WESTCHESTER
DEPARTMENT OF SOCIAL SERVICES
Division of Family and Child Social Services

Ms. Ethel Reid
64 Morris St.
Yonkers, N.Y. 10705

Date: 10/31/73

Dear Ms. Reid:

Your application for public assistance has been denied for the following reasons:

1. Your income from employment is sufficient to maintain your needs—

2. Agency does not reimburse an applicant because she was absent from employment due to personal reasons.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550 or by writing to The State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

Sincerely,

SUSAN MORRIS
Name

Examiner
Title

Notice of Denial of Public Assistance, Exhibit "B" to Reid Affidavit.

COUNTY OF WESTCHESTER
DEPARTMENT OF SOCIAL SERVICES
Division of Family and Child Social Services

Ms. Ethel Reid
64 Morris St.
Yonkers, N.Y. 10705

Date: 11-27-73

Dear Ms. Reid:

Your application for public assistance has been denied for the following reasons:

You are sanctioned for 75 days from 10-11-73, the days you left your job. However, you may re-apply on 12-24-73.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, Albany, New York, New York 12203.

Sincerely,

W. A. HAYWARD
Name

Examiner
Title

Letter of Transmittal of the Fair Hearing Decision, Exhibit "C" to Reid Affidavit.

TRANSMITTAL OF FAIR HEARING DECISION--TO APPELLANT

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

Appellant's Name and Address

Ethel Reid
c/o Legal Aid Soc. 138 S. Broadway
Yonkers, New York

Date of Decision

2-8-74

Date of Hearing

12-14-73

Case No. and Program

PA

Social Services Center or Agency

Westchester

Attorney or Other Representative

WCLA

Date of Request for Hearing

11-29-73

Enclosed is the decision rendered in the above fair hearing.

Letter of Transmittal of the Fair Hearing Decision, Exhibit "C" to Reid Affidavit.

If the decision is in your favor and your local social services agency is directed to take certain action, this action should be taken within 15 days of your receipt of this decision. If you do not feel that the agency has complied in whole or in part with the directions to them in this decision, you should write to the Compliance Unit, Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

If this decision is not in your favor, you may file a petition for judicial review by the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If you wish to appeal this decision and are not aware of the procedure, you should seek such information from the legal resources available to you (e.g.—County Bar Association, Legal Aid, OEO groups, etc.).

OFFICE OF COUNSEL
Fair Hearing Section

Copy sent to:

Westchester Co.
E. Smith
W. Kaufman

Decision After Fair Hearing, Exhibit "D" to Reid Affidavit.

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

ETHEL REID

from a determination by the Westchester County Department of Social Services (hereinafter called the agency)

A fair hearing was held at White Plains, New York on December 14, 1973, before John Burke, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for a grant of public assistance. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) The appellant applied for a grant of public assistance on October 23, 1973.

(2) The household consist of the appellant, aged 29 years.

(3) The agency denied the appellant's application on November 27, 1973 on the ground the appellant voluntarily left her employment on October 11, 1973.

(4) The appellant left her employment voluntarily on October 11, 1973. Subseqeunt thereto her application for

public assistance of October 23, 1973, was denied by the agency on November 27, 1973.

Section 385.7 of the Regulations provide that an applicant for a grant of home relief who voluntarily terminated employment shall be disqualified from receiving assistance for 75 days thereafter. The agency properly denied the appellant's application.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York
Feb 8 1974

ABE LAVINE
Abe Lavine
Commissioner

By CARMEN SHANG
Carmen Shang
Assistant Commissioner

Affidavit of Edmund J. Byrnes, in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

EDMUND J. BYRNES, being duly sworn, deposes and says:

1. I am an attorney associated with The Legal Aid Society of Westchester County and I make this affidavit in support of plaintiffs' class action for declaratory and injunctive relief and damages against the defendants; I make this affidavit to show how the defendants are applying the law and regulation, which are being challenged by this class action.

2. I am familiar with all of the facts and circumstances in the application of one Anthony Brownlee for public assistance from the Westchester County Department of Social Services (hereafter "Westchester D.S.S.") and in his application for unemployment insurance benefits from the Yonkers, New York office of the New York State Department of Labor, Unemployment Insurance Division (hereafter "Unemployment office").

3. It has been about 10 months since I last saw Mr. Brownlee. At that time his residence address was c/o Hayes, 162 Woodworth Avenue, Yonkers, New York. Mr. Brownlee was at all times herein mentioned an adult citizen of the United States and of the State of New York.

Affidavit of Edmund J. Byrnes.

4. Mr. Brownlee was discharged from his employment at J-E Plastics Co. on March 2, 1973, under the circumstances as found by a Referee of the New York State Department of Labor in his decision, dated May 25, 1973 (which is incorporated herein and a copy of which is annexed hereto as Exhibit "A"). No appeal was taken from the decision.

5. After being discharged from employment at J-E Plastics Co. on March 2, 1973. Mr. Brownlee applied for benefits from the Unemployment office. His application was denied by letter, dated March 26, 1973, for the reasons set forth therein (a copy of the letter is annexed hereto as Exhibit "B"). He thereafter requested a hearing for review of this denial.

6. On April 18, 1973, Mr. Brownlee applied for public assistance from the Westchester D.S.S. His application was denied by letter, dated April 18, 1973, for the reason set forth therein (a copy of the letter is annexed hereto as Exhibit "C"). I requested a Fair Hearing for review of this denial by a letter dated April 18, 1973 (a copy of this letter is annexed hereto as Exhibit "D"), addressed to the New York State Department of Social Services (hereafter "N.Y.S. D.S.S.").

7. On April 30, 1973, I received a notice from the N.Y.S. D.S.S. that the Fair Hearing would be held on May 8, 1973.

8. Upon information and belief, the source of which was Anthony Brownlee, at this time, he owed his landlord $150.00 (6 weeks at $25.00 per week), he owed money to friends who loaned him money for food, and he had been looking for a job.

Affidavit of Edmund J. Byrnes.

9. On May 8, 1973, the Fair Hearing was held with documents introduced and testimony taken.

10. On May 22, 1973, defendant Abe Lavine, Commissioner of N.Y.S. D.S.S., issued a Decision After Fair Hearing (a copy of this decision is annexed hereto as Exhibit "E").

11. Defendant Lavine's conclusion in his Decision is not based on the evidence nor is it based on Lavine's own findings. After Lavine finds that Mr. Brownlee

> . . .was discharged from his employment for failing to maintain a supply of a certain salve which resulted in a production shutdown . . . [*Decision,* p. 1],

Lavine concludes:

> On the credible evidence, the appellant was discharged from his employment under circumstances which constitutes voluntary termination of employment within the meaning of the afore-cited regulation [referring to Section 385.7 of Title 18, New York Code Rules and Regulations]. [*Decision,* p. 1]

12. It appears to me that defendants' application of this challenged regulation in Mr. Brownlee's case was made without regard whatsoever to the actual circumstances surrounding the termination of his employment; the regulation was blindly applied, resulting in harm to Mr. Brownlee.

(Sworn to by Edmund J. Byrnes, March 13, 1974.)

Decision of Referee of the New York State Department of Labor, Exhibit "A" to Byrnes Affidavit.

NEW YORK STATE DEPARTMENT OF LABOR
UNEMPLOYMENT INSURANCE REFEREE SECTION
500 Eighth Avenue
New York, N. Y. 10018

Referee #14481-73

S.S.A. #422-48-2087

DECISION MAILED AND DULY FILED IN THE DEPARTMENT OF LABOR ON MAY 25, 1973

In the Matter of:

Anthony Brownlee
52 Poplar St.
Yonkers, New York 10701

Local Office #83
Department of Labor
70 Ashburton Ave.
Yonkers, New York 10701

J. E. Plastics Co.
400 Nepperhan Ave.
Yonkers, New York

Arnold Standard Review Corp.
100 Merrick Rd.
Rockville Centre, New York 11571

Edmund Byrnes, Atty.
Legal Aid Society
138 S. Broadway
Yonkers, New York

FINDINGS OF FACT: A hearing was held at which claimant, his attorney, representatives of the employer and a representative of the Industrial Commissioner appeared and testimony was taken.

Claimant was disqualified for voluntary leaving of employment without good cause by initial determination effective March 3, 1973.

Claimant had worked for the employer for over one year until March 2. He was receiving foreman and his salary was about $2.87 per hour. Claimant's duties were to receive and verify merchandise, check such merchandise, remove rubbish when necessary, some general maintenance and also he was required to submit an inventory list every Friday and when certain items were low in stock to also submit a purchase order so the items could be replaced. On three occasions claimant had either failed to submit the inventory or the inventory had not been correct. He was spoken to regarding those deficiencies. Of the items claimant had to check in order to make sure that it was not in short supply was a solvent. He was aware that work production would stop if this solvent ran out. On Friday, February 23 claimant checked the amount of solvent by sounding the drum in which the solvent was stored. He believed from the sounding that the drum was almost full. He could not have visually examined the amount of solvent in the drum because the opening was small and a hose from a pump was inserted therein. Claimant therefore indicated that there was a full drum of the solvent and purchase of more solvent was not needed. On Wednesday, February 28, which was only three working days later, the drum containing the solvent was empty. Normally, such drum would have lasted for about seven to eight working days. The

employer's production work was held up a few hours because of this. Claimant was discharged because the employer felt that he was negligent in making an incorrect report as to the amount of solvent.

OPINION: Claimant make [sic] an incorrect report of the amount of solvent on hand and he had been previously spoken to regarding the need for the inventory to be correct. However, the only method available to claimant in checking on the amount of solvent was to sound the drum and estimate from such sound the amount of solvent in the drum. Such method is dependent to a great extent on personal judgment and is far from accurate. Claimant did make an error but this was not intentional and did not amount to gross negligence. Although there was negligence, it is held that although it is the employer's prerogative to discharge an employee if it wishes, claimant did not provoke his discharge under conditions requiring disqualification.

DECISION: The initial determination is overruled.

/s/ SAM L. SIMON
Referee

jcl

Notice of Denial of Application of Unemployment Insurance Benefits, Exhibit "B" to Byrnes Affidavit.

NEW YORK STATE DEPARTMENT OF LABOR
Division of Employment

NOTICE OF DETERMINATION TO CLAIMANT

Anthony H. Brownlee
52 Poplar Street
Yonkers, NY 10701

Local Office Address

☐ Given
Date 3/26/73
☒ Mailed

422-48-2087
S.S. Acct. No.

No unemployment insurance benefits can be paid to you for the period beginning 3/3/73 until you have subsequently worked for an employer not less than 3 days in each of 4 weeks *or* earned at least $200. Self-employment and earnings from self-employment will not count.

DETERMINATION You quite your job without good cause.

REASON This determination is based on the following: You provoked your discharge by failing to follow orders after previous warning which resulted in production shutdown.

RENEWING YOUR CLAIM If you are satisfied that this determination is correct, you may apply to renew your claim

Notice of Denial of Application of Unemployment Insurance Benefits, Exhibit "B" to Byrnes Affidavit.

by reporting to this local office if you are unemployed and believe that you have satisfied the above requirement of subsequent work or earnings.

RIGHT TO A HEARING IF YOU ARE NOT SATISFIED WITH THIS DETERMINATION, YOU MAY ASK FOR A HEARING BEFORE AN IMPARTIAL REFEREE AT NO COST OR OBLIGATION TO YOU.

REQUEST FOR HEARING HOWEVER, YOUR REQUEST MUST BE MADE IN PERSON OR BY MAIL AT THIS LOCAL OFFICE NOT LATER THAN 30 DAYS FROM THE DATE OF THIS NOTICE.

When requesting a hearing, be sure to bring your Insurance Book, Calendar Insert and Claim Card, if issued. If you request a hearing by mail, enclose them with your request.

REPORTING If you ask for a hearing, continue to report to your insurance and employment offices on your assigned days as long as you remain unemployed. This will protect your rights to only benefits you claim.

FOR THE INDUSTRIAL COMMISSIONER

By F. SOBELS

Notice of Denial of Public Assistance, Exhibit "C" to Byrnes Affidavit.

COUNTY OF WESTCHESTER
DEPARTMENT OF SOCIAL SERVICES

DIVISION OF FAMILY AND CHILD SOCIAL SERVICES

Date: 4/18/73

Mr. Anthony Brownlee
162 Woodworth Ave.
Yonkers, N.Y.

Dear Mr. Brownlee

Your application for public assistance has been denied for the following reasons:

There is a 75 day sanction from the day you quit your job before you can apply for public assistance. As per letter from N.Y. State Dept. of Labor dated 3/26/73 "You quit your job without good cause."

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, New York, New York 12203.

Sincerely,

H. ACKERMAN
Name

Certification
Title

#841—Rev. 9/72

Request for a Fair Hearing, Exhibit "D" to Byrnes Affidavit.

THE LEGAL AID SOCIETY OF WESTCHESTER COUNTY
Yonkers Branch Office
138 South Broadway
Yonkers, N. Y. 10701

(914) 423-0700

Fair Hearing Section
New York State Department
Social Services
1450 Western Avenue
Albany, New York 12203

April 13, 1973
Date

Re: Anthonly Brownlee
Name

Case #

C/O Hayes
Address

162 Woodworth Avenue, Yonkers, New York

Gentlemen:

I request a Fair Hearing for the following reasons:

I was dismissed from job on March 2, 1973; I have not received unemployment benefits and I now need money for food, rent, etc.

Please notify my attorneys, The Legal Aid Society of Westchester County, at 138 South Broadway, Yonkers, New York, 10701 of the date and time of the hearing so that they can represent me at that time.

Very truly yours,

cc: Mr. Walter Dravis
Supervisor of Fair Hearings
Complaints & Adjustments
Department of Social Services
320 County Office Building
White Plains, New York 10601

Decision After Fair Hearing, Exhibit "E" to Byrnes Affidavit.

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

ANTHONY BROWNLEE

from a determination by the Westchester County Department of Social Services (hereinafter called the agency)

A fair hearing was held at White Plains, New York on May 8, 1973 before John Brennan, Hearing Officer, at which the appellant and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for public assistance in the home relief category. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant, aged 32, applied for public assistance on April 18, 1973. The agency denied appellant's application on April 18, 1973.

(2) The agency based its determination on the grounds that the appellant had voluntarily terminated his employment in order to qualify for public assistance.

(3) Appellant, on March 13, 1973, was discharged from his employment for failing to maintain a supply of a certain salve which resulted in a production shutdown on that date.

Affidavit of Roy Levee, in Support of Motion is Printed Infra, With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee.

(4) Appellant had been excused from work for two days prior to March 13, 1973 for personal reasons.

Section 385.7 of the Regulations of the State Department of Social Services provides that a person who voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part. On the credible evidence, the appellant was discharged from his employment under circumstances which constitutes voluntary termination of employment within the meaning of the aforecited regulation. Accordingly, the determination of the agency is proper.

DECISION: The determination of the agency is affirmed.

Dated: Albany New York
May 22, 1973

ABE LAVINE
Abe Lavine
Commissioner

By CARMEN SHANG
Carmen Shang
Assistant Commissioner

Affidavit of Roy Levee, in Support of Motions is Printed *Supra*, With the Order to Show Cause for Order Granting Intervention and Temporary Restraining Order on Behalf of Roy Levee.

Affidavit of John C. Gray, in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF KINGS } ss.:

JOHN C. GRAY, JR., being duly sworn, deposes and says:

1. I am the attorney of record for applicant for intervention, Roy Levee, herein.

2. The basic facts underlying Mr. Levee's application for intervention in this action are set out in Mr. Levee's affidavit of January 18, 1974, annexed to the order to show cause signed January 21, 1974.

3. Mr. Levee's application for intervention was denied by this Court on January 25, 1974 after counsel for proposed defendant Jule B. Sugarman stated in open court that the challenged statute and regulation, New York Social Services Law § 131 (10) and 18 N.Y.C.R.R. § 385.7, would no longer be applied to Mr. Levee and that his application for assistance would be processed within two weeks.

4. I make this affidavit to inform the court as to the subsequent developments in Mr. Levee's case, which well illustrate the manner in which the challenged statute and regulation are enforced by defendants in conjunction with the so-called "fair hearing" procedures administered by defendant Lavine.

5. To review briefly, Mr. Levee was denied emergency public assistance on January 15, 1974 based on the challenged statute and regulation. On January 16, 1973, Susan Seel, an attorney from this office, requested by phone from employees of defendant's Lavine an emergency expedited fair hearing. Subsequently a fair hearing was indeed scheduled for January 30, 1974. A copy of the notice of hearing is annexed to my affidavit herein of January 21, 1974.

6. On January 30, 1974 Mr. Levee, represented by a lay representative from this office, Mr. Rodney Ross, appeared and testified at the fair hearing.

7. As of the present date, March 7, 1974, this office has received no notification of the issuance of any decision on that hearing.

8. Fortunately, Mr. Levee is, after a long struggle, currently receiving public assistance, but this was not a result of the hearing, which long ago proved itself an entirely ineffective remedy for Mr. Levee's emergency situation.

(Sworn to by John C. Gray, Jr., March 7, 1974.)

Affidavit of Allen Phillips, in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

COUNTY OF WESTCHESTER }
STATE OF NEW YORK } ss.:

ALLEN PHILLIPS, being duly sworn, deposes and says:

1. I am a citizen of the United States and I reside at 32 Hunter Street, Ossining, Westchester County, New York.

2. I am 39 years of age and I have a ninth grade education. I have been regularly employed all of my life.

3. In November of 1973 I was injured in an accident and as a result I was unable to continue my job as a dishwasher. I received some public assistance from the Westchester County Department of Social Services in the category of Home Relief. When I was receiving assistance, I complied with the requirements that I be available for work, report for work referrals and actively seek employment.

4. I found employment by myself in the month of January, 1974, at the Mayflower Hotel in New York City. I called my caseworker and asked that my case be closed.

5. I was discharged from my employment at the Mayflower Hotel after working there for about a week. The reason for my discharge was that I was late one day for work.

6. I again looked for work but I could not find any. When I ran out of money, I applied for public assistance.

7. On February 1, 1974, my application for assistance was denied and I was told that I could not reapply for assistance for 75 days from the date of my discharge. A copy of a notice of disqualification is annexed hereto as Exhibit "A".

8. My attorney requested an expedited hearing but no hearing was held or scheduled until March 12, 1974.

9. I was unable to attend my hearing on March 12, 1974, because I was in jail, having been arrested for alleged shoplifting.

10. The shoplifting charge against me has been adjourned for six months in contemplation of dismissal.

11. My attorney requested that a hearing be scheduled as soon as I was released from jail. I was finally provided a hearing on April 4, 1974.

12. A decision was not rendered as of April 25, 1974.

13. For the entire period from my date of application until now, I have been destitute. I have been forced to borrow money for food. I have been unable to pay my rent. I have been unable to use public transportation to seek a new job. I have suffered great humiliation and injury as a result of the mistake in application of 18 NYCRR § 385.7.

14. I am a member of the intended class of plaintiffs in this action.

WHEREFORE, I respectfully pray that this Court grant plaintiffs the relief sought in this action.

(Sworn to by Allen Phillips, April 25, 1974.)

Notice of Denial of Public Assistance, Exhibit "A" to Phillips Affidavit.

COUNTY OF WESTCHESTER

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF FAMILY AND CHILD SOCIAL SERVICES

Mr. Allan Phillips
32 Hunter Street
Ossining, New York 10562

Dear Mr. Phillips:

Your application for public assistance has been denied for the following reasons:

As it was explained to you at our last meeting of approximately February 21, 1974, you provoked your own discharge. This means that you may not re-apply until 75 days from the date you were discharged.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

Sincerely,

By M. ENGLISH
Title Examiner

Affidavit of Pat Scarfone, in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

CITY OF MOUNT VERNON }
COUNTY OF WESTCHESTER } ss.:
STATE OF NEW YORK }

PAT SCARFONE, being duly sworn, deposes and says:

1. I applied for public assistance in the category of Home Relief at the Mount Vernon district office of the Westchester County Department of Social Services in December, 1973. At the time I applied, I was destitute because I had no money and I was unemployed.

2. My application for assistance was denied by a letter of the Westchester County Department of Social Services dated December 12, 1973, which states as follows, in part:

> "Your application for public assistance has been denied for the following reasons: You were fired from your job due to the fact that you didn't follow instructions. Therefore, you are ineligible for public assistance for 75 days. Since you were receiving aid up until 12/31/73, you are not eligible for PA until 3/14/74.
>
> If you are not satisfied with this decision you have the right to ask for a Fair Hearing."

A copy of the denial letter is annexed hereto as Exhibit "A".

3. By a letter dated December 13, 1973, my counsel requested a fair hearing.

4. My aid was terminated on January 1st, 1974. I ran out of money and I was unable to pay for my rent or buy food. I had to resort to asking people if they could help me by giving me enough money for food, rent and other necessities.

5. My hearing was not held until January 10, 1974, twenty-seven days after my request, and after I had been disqualified for assistance for seventy-five days.

6. A decision after my fair hearing was not rendered until February 20, 1974, fifty (50) days after I had been sanctioned under color ot the law and regulation that are challenged in this action. The fair hearing decision was rendered in my favor. A copy of the decision is annexed hereto as Exhibit "B".

7. I believe that I suffered irreparable harm that cannot be remedied by payment now of the assistance that was wrongfully denied to me when I needed it desperately. To date, I have not even received the assistance to which I was entitled, because of the delay by defendant Berman in implementing the fair hearing decision. I had to move from my apartment in Mount Vernon because I was unable to pay my rent, though I wanted to stay.

8. I believe that the failure of the defendants in this action to provide a hearing before I was sanctioned under color of 18 N.Y.C.R.R. § 385.7 and New York Social Services Law 131(10) deprived me of my rights to due process and equal protection of the laws that are guaranteed by

the Fourteenth Amendment to the United States Constitution.

9. I have had a difficult time obtaining and keeping employment in the past. I fear that in the future I might again be denied assistance under color of the law and regulation that are challenged in this action. I am a member of the class of plaintiff represented by the named parties plaintiff.

WHEREFORE, deponent respectfully prays that this Court grant the relief sought by plaintiffs in this action.

(Sworn to by Pat A. Scarfone, March 28, 1974.)

Notice of Denial of Public Assistance, Exhibit "A" to Scarfone Affidavit.

COUNTY OF WESTCHESTER

DEPARTMENT OF SOCIAL SERVICES

DIVISION OF FAMILY AND CHILD SOCIAL SERVICE

Mr. Pat Scarfone
47 S. 1st Ave.
Mt. Vernon, N.Y.

Dear Mr. Scarfone:

Your application for public assistance has been denied for the following reasons: You were fired from your job due to the fact that you didn't follow instructions. Therefore you are ineligible for public assistance for 75 days. Since you were receiving aid up until 12/31/74, you are not eligible for PA until 3/14/74.

If you are not satisfied with this decision you have the right to ask for a Fair Hearing. If you wish to have a Fair Hearing you must make your request within 60 days. You may do so by phoning 212-488-6550, or by writing to The State Department of Social Services, 1450 Western Avenue, New York, New York 12203.

Sincerely,

ILLEGIBLE
Name

Examiner
Title

Fair Hearing Decision, Exhibit "B" to Scarfone Affidavit.

TRANSMITTAL OF FAIR HEARING DECISION—TO APPELLANT

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICE

Appellant's
Name
and
Address

Mr. Pat Scarfone
47 S. 1st Ave.
Mt. Vernon, N.Y. 10550

Date of Decision
2/20/74

Date of Hearing
1/10/74

Case No. and Program
HR

Social Services Center or Agency
WESTCHESTER

Attorney or Other Representative
Gerald Herlander

Date of Request for Hearing
12/17/73

Enclosed is the decision rendered in the above fair hearing.

If the decision is in your favor and your local social services agency is directed to take certain action, this action should be taken within 15 days of your receipt of this

decision. If you do not feel that the agency has complied in whole or in part with the directions to them in this decision, you should write to the Compliance Unit, Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203.

If this decision is not in your favor, you may file a petition for judicial review by the courts pursuant to the provisions of Article 78 of the Civil Practice Law and Rules. If you wish to appeal this decision and are not aware of the procedure, you should seek such information from the legal resources available to you (e.g.—County Bar Association, Legal Aid, OEO groups, etc.).

OFFICE OF COUNSEL
Fair Hearing Section

Copy sent to:

Westchester County
E. Smith
W. Kaufman
Gerald Herlander, Rep.

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

PAT SCARFONE

from a determination by the Westchester County Department of Social Services (hereinater called the agency)

DECISION AFTER FAIR HEARING

A fair hearing was held at White Plains, New York on January 10, 1974, before Arthur Chiarello, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for a grant of home relief. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant, alone, age 38, applied for a grant of home relief on December 3, 1973. On December 12, 1973, the agency determined to deny the application on the basis that he was fired from his job under circumstances that were tantamount to a voluntary termination and therefore, he was ineligible for a period of 75 days and until he complies with the requirements applicable to employable persons.

(2) On December 10, 1973, appellant was hired by American Technical Machinery corp. at $90.00 per week plus overtime. On December 12, 1973, appellant was discharged from the job and reported to the agency this information. Appellant was put to work operating a machine and was discharged because of his lack of experience.

Section 385.7(a) of the Regulations of the State Department of Social Services provides that a person who, without good cause, voluntarily terminates his employment, including work relief, in which he is able to engage shall be disqualified from receiving assistance for a period of 75 days and until he complies with the requirements relating to employables. The record establishes that the appellant, was discharged because of his inability to perform the work to the satisfaction of the employer and did not voluntarily terminate the job.

At the hearing, the appellant's representative claimed that aid should have been continuing and an advance notice provided to discontinue appellant's public assistance. Section 351.8 of the regulations provides in part as follows:

"(b) The decision to accept or deny the application shall be made as soon as the facts to support it have been established by investigation but not later than 30 days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the social services official's control. The applicant shall be notified in writing of the decision in accordance with department regulations. The reason for delay shall be recorded in the case record and communicated to the applicant.

(c) (1) When eligibility has been established the application shall be accepted for assistance pending the development of potential resources i.e., support from relatives,

adjustment of insurance, or eligibility for benefits. It shall be the responsibility of the social services official to fully explore and develop all such resources.

(2) When eligibility has been established, payment of the regularly recurring grant shall ordinarily be made effective as of the date of application.

(3) A first payment shall be made as soon as possible but not later than within 30 days of the application.

(4) When eligibility has not been established but immediate need is determined to exist, an emergency or predetermination grant of assistance shall be made in accordance with department regulations."

The evidence establishes that appellant's application had never actually been approved and accordingly no prior notice to terminate was required.

However, since denial of appellant's application was not proper and cannot be sustained, public assistance should be provided retroactive to the date of application in accordance with verified need.

DECISION: The determination of the agency is not and cannot be affirmed. The agency is directed to take appropriate action in accordance with the foregoing decision pursuant to the provisions of Section 358.22 of the Regulations of the State Department of Social Services.

DATED: Albany, New York
FEB 20 1974

ABE LAVINE
Abe Lavine
COMMISSIONER

By: CARMEN SHANG
Carmen Shang
ASSISTANT COMMISSIONER

Affidavit of Gerald A. Norlander, in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

GERALD A. NORLANDER, being duly sworn, deposes and says that:

1. I am an attorney associated with The Legal Aid Society of Westchester County, attorneys for plaintiffs herein.

2. On or about December 13, 1973, I telephoned an employee of defendant Lavine in the "Fair Hearing" Section, Office of Counsel, New York State Department of Social Services, in Albany, New York. I requested that Mr. Ronald Milne be provided an expedited "Fair Hearing."

3. I was informed by Lavine's employee that the New York State Department of Social Services did not have any procedure for expedited "Fair Hearings", and that Mr. Milne's request for a hearing would be processed in the regular manner and scheduled at the regular interval. Mr. Milne's hearing was not scheduled until January 9, 1974, twenty-seven days after the request.

4. On or about December 13, 1973, I requested that a "Fair Hearing" be held for Mr. Pat Scarfone, who had

received notice of his disqualification from receiving Home Relief for 75 days under the provision challenged in this action.

5. Mr. Scarfone's "fair hearing" was not scheduled and held until January 10, 1974, and a decision favorable to Mr. Scarfone was not rendered until February 20, 1974.

6. Defendant Berman failed to implement the decision after fair hearing until several weeks after the decision was rendered. Thus Mr. Scarfone was unable to obtain relief within the 75 day sanction period.

7. On or about March 12, 1974, I appeared at a "Fair Hearing" on behalf of Allen Phillips, who had requested a hearing after he was disqualified from receiving assistance for 75 days on or about February 21, 1974. I requested an adjournment pending Mr. Phillips release from jail, where he was then held pending disposition of a shoplifting charge.

8. On March 13, 1974, I telephoned defendant Lavine's Fair Hearing Section in Albany, New York, and informed them that Mr. Phillips was able to attend his hearing. I requested that his hearing be promptly rescheduled. Mr. Phillips' hearing was not rescheduled and held until April 4, 1974. As of April 24, 1974, a decision after Mr. Phillips' hearing had not been rendered. Mr. Phillips was thus unable to challenge the presumption and obtain relief within the 75 day sanction period.

WHEREFORE, dependent respectfully requests that plaintiffs' motions be granted.

(Sworn to by Gerald A. Norlander, April 24, 1974.)

Supplemental Affidavit of Gerald A. Norlander, in Support of Motions for Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF WESTCHESTER } ss.:

GERALD A. NORLANDER, being duly sworn, deposes and says:

1. I am an attorney at law duly authorized to practice before this Court, and I am of counsel to The Legal Aid Society of Westchester County, attorneys for plaintiffs.

2. Plaintiffs contend that a presumption contained in Section 131(10) of the New York Social Services Law, under which defendants presumed that plaintiffs voluntarily terminated their employment for the purpose of obtaining Home Relief, violates the due process clause of the Fourteenth Amendment to the United States Constitution because there is not a sufficient factual connection between proven facts and the fact presumed by statute.

3. Annexed hereto are portions of empirical studies and reports which support plaintiffs' contention:

Exhibit A:

Work In America, Report of a Special Task Force to the Secretary of Health, Education and Welfare, Prepared under the Auspices of the W.E. Upjohn Institute for Employment Research, MIT Press, 1973.
"The Functions of Work", pages 3-10;
"Work and Welfare", pages 175-176.

Exhibit B.

New York State Department of Social Services, "Helping People To Help Themselves," Publication No. 1098.

Exhibit C:

New York City Human Resources Administration, 1972 Annual Report, page 11.

Exhibit D:

Testimony of Mr. Barry Van Lare, Acting Commissioner of the New York State Department of Social Services, in *Problems in Administration of Public Welfare Programs,* Hearings before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92d Cong., 2d Sess. Part I, pages 257-258, 362.

Exhibit E:

Bowen, W.G. and Finegan, T.A., *The Economics of Labor Force Participation,* pages 67-71, (Princeton University Press 1969).

Exhibit F:

Irelan, L.M., ed., *Low Income Life Styles,* U.S. Department of Health, Education and Welfare, Social and Rehabilitation Service, Office of Research and Demonstration, Preface, v-vi, pages 1-6.

Supplemental Affidavit of Gerald A. Norlander.

Exhibit G:

Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July, 1970, pages 1-7.

Exhibit H:

U.S. Department of Labor, Bureau of Labor Statistics, "Work Attitudes of Disadvantaged Black Men," Report 404, 29 pages.

Exhibit I:

Goodwin, Leonard, *Do The Poor Want To Work,* A Social-Psychological Study of Work Orientations, Foreward, pages 112-113. (Brooking Institution 1972).

WHEREFORE, deponent respectfully prays that plaintiffs' motions be granted.

(Sworn to by Gerald A. Norlander, April 24, 1974.)

Excerpts From *Work In America,* Report of a Special Task Force to the Secretary of Health, Education, and Welfare, Plaintiff's Exhibit "A".

WORK IN AMERICA

Report of a Special Task Force to the
Secretary of Health, Education, and Welfare

Prepared under the Auspices of the
W. E. Upjohn Institute for Employment Research

3 The Functions of Work

Gross National Product the many thousands of dollars the replacements are paid. It is, therefore, an inconsistency of our definition of work that leads us to say that a woman who cares for her own children is not working, but if she takes a job looking after the children of others, she is working.

Viewing work in terms of pay alone has also produced a synonymity of "pay" and "worth," so that higher-paid individuals are thought by many to have greater personal worth than those receiving less pay. At the bottom of this scale, a person without pay becomes "worthless." The confusion of pay with worth is a result of historical events and traditions apparently rooted in the distinction between "noble" and "ignoble" tasks.[2] History might have been otherwise and garbage men, for example, in recognition of their contribution to health, might have been accorded monetary rewards similar to those received by physicians. Certainly, it takes little reflection to conclude that, except in crude economic terms, no one is worth nothing, nor is anyone worth a hundred times more than another merely because he is paid a hundred times as much.

We can come closer to a multi-dimensional definition of work if we define it as "an activity that produces something of value for other people." This definition broadens the scope of what we call work and places it within a social context. It also implies that there is a purpose to work. We know that the housewife is *really* working, whether she is paid or not; she is being productive for other people. Substituting the children a woman cares for does not change the nature of her work, only the "others" for whom she is productive. And voluntary tasks are certainly work, although they are not remunerated. Some people at various stages of their lives may be productive only for themselves, a possible definition of leisure.

The Functions of Work

The economic purposes of work are obvious and require little comment. Work is the means by which we provide the goods and services needed and desired by ourselves

and our society. Through the economic rewards of work, we obtain immediate gratification of transient wants, physical assets for enduring satisfactions, and liquid assets for deferrable gratifications. For most of the history of mankind, and for a large part of humanity today, the economic meaning of work is paramount.

Work also serves a number of other social purposes. The workplace has always been a place to meet people, converse, and form friendships. In traditional societies, where children are wont to follow in their parents' footsteps, the assumption of responsibility by the children for one task and then another prepares them for their economic and social roles as adults. Finally, the type of

work performed has always conferred a social status on the worker and the worker's family. In industrial America, the father's occupation has been the major determinant of status, which in turn has determined the family's class standing, where they lived, where the children went to school, and with whom the family associated —in short, the life style and life chances of all the family members. (The emerging new role of women in our society may cause class standing to be co-determined by the husband's *and* wife's occupations.)

The economic and societal importance of work has dominated thought about its meaning, and justifiably so: a function of work for any *society* is to produce and distribute goods and services, to transform "raw nature" into that which serves our needs and desires. Far less attention has been paid to the *personal* meaning of work, yet it is clear from recent research that work plays a crucial and perhaps unparalleled psychological role in the formation of self-esteem, identity, and a sense of order.

Work contributes to self-esteem in two ways. The first is that, through the inescapable awareness of one's efficacy and competence in dealing with the objects of work, a person acquires a sense of mastery over both himself and his environment.[3] The second derives from the view, stated earlier, that an individual is working when he is engaging

in activities that produce something valued by other people. That is, the job tells the worker day in and day out that he has something to offer. Not to have a job is not to have something that is valued by one's fellow human beings. Alternatively, to be working is to have evidence

that one is needed by others. One of these components of self-esteem (mastery) is, therefore, internally derived through the presence or absence of challenge in work. The other component (how others value one's contributions) is externally derived. The person with high self-esteem may be defined as one who has a high estimate of his value and finds that the social estimate agrees.

The workplace generally, then, is one of the major foci of personal evaluation. It is where one finds out whether he is "making the grade"; it is where one's esteem is constantly on the line, and where every effort will be made to avoid reduction in self-evaluation and its attending sense of failure.[4] If an individual cannot live up to the expectations he has of himself, and if his personal goals are not reasonably obtainable, then his self-esteem, and with it his relations with others, are likely to be impaired.

Doing well or poorly, being a success or failure at work, is all too easily transformed into a measure of being a valuable or worthless human being, as Erich Fromm writes:

Since modern man experiences himself both as the seller and as the commodity to be sold on the market, his self-esteem depends on conditions beyond his control. If he is successful, he is valuable; if he is not, he is worthless.[5]

When it is said that work should be "meaningful," what is meant is that it should contribute to self-esteem, to the sense of fulfillment through the mastering of one's self and one's environment, and to the sense that one is valued by society. The fundamental question the individual worker asks is "What am I doing that *really* matters?"[6]

When work becomes merely automatic behavior, instead of being *homo faber,* the worker is *animal laborens.* Among workers who describe themselves as "just laborers," self-esteem is so deflated that the distinction between the human as worker and animal as laborer is blurred.[7]

6 Introduction

The relationship between work and self-esteem is well summarized by Elliot Jacques:

> . . . working for a living is one of the basic activities in a man's life. By forcing him to come to grips with his environment, with his livelihood at stake, it confronts him with the actuality of his personal capacity—to exercise judgment, to achieve concrete and specific results. It gives him a continuous account of his correspondence between ouside reality and the inner perception of that reality, as well as an account of the accuracy of his appraisal of himself. . . . In short, a man's work does not satisfy his material needs alone. In a very deep sense, it gives him a measure of his sanity.[8]

Work is a powerful force in shaping a person's sense of identity. We find that most, if not all, working people tend to describe themselves in terms of the work groups or organizations to which they belong.[9] The question, "Who are you?" often solicits an organizationally related response, such as "I work for IBM," or "I'm a Stanford professor." Occupational role is usually a part of this response for all classes:. "I'm a steelworker," or "I'm a lawyer." In short: "People tend to 'become what they do.' "[10]

Several highly significant effects result from work-related identification: welfare recipients become "nobodies"; the retired suffer a crucial loss of identity; and people in low-status jobs either cannot find anything in their work from which to derive an identity or they reject the identity forced on them.[11] Even those who voluntarily

leave an organization for self-employment experience difficulties with identity—compounded by the confusion of others—as the following quote from an article entitled "Striking Out on Your Own," illustrates:

No less dramatic . . . are those questions of identity which present themselves to the self-employed. These identity crises and situations usually come packaged in little episodes which occur when others find that they have encountered a bona fide weirdo without a boss. . . . You are stopped by a traffic policeman to be given a ticket and he asks the name of your employer and you say that you

work for yourself. Next he asks, "Come on, where do you work? Are you employed or not?" You say, "Self-employed." . . . He, among others you meet, knows that self-employment is a tired euphemism for being out of work. . . . You become extremely nervous about meeting new people because of the ever-present question, "Who are you with?" When your answer fails to attach you to a recognized organization . . . both parties to the conversation often become embarrassed by your obscurity.[12]

Basic to all work appears to be the human desire to impose order, or structure, on the world. The opposite of work is not leisure or free time; it is being victimized by some kind of disorder which, at its extreme, is chaos. It means being unable to plan or to predict. And it is precisely in the relation between the desire for order and its achievement that work provides the sense of mastery so important to self-esteem. The closer one's piece of the world conforms with one's structural plans, the greater the satisfaction of work. And it follows that one of the greatest sources of dissatisfaction in work results from

the inability to make one's own sense of order prevail—the assemblyline is the best (or worst) example of an imposed, and, for most workers, unacceptable structure.

These observations have been verified a number of times in investigations of mass and protracted unemployment. Loss of work during the Depression was found to produce chronic disorganization in the lives of parents and children, as documented in several studies of the 1930's.[13] Cynicism, loss of self-confidence, resentment, and hostility toward the Federal Government, helplessness, and isolation are all experienced during such difficult periods.[14] According to Charles Winick,

Inasmuch as work has such a profund role in establishing a person's life space, emotional tone, family situation, object relations, and where and how he will live, either the absence of work or participation in marginal work often makes it likely that he will develop a pervasive *atonie*.[15]

Atonie is a condition of deracination—a feeling of rootlessneess, lifelessness, and dissociation—a word which in the original Greek meant a string that does not vibrate, that has lost its vitality.

Besides lending vitality to existence, work helps establish the regularity of life, its basic rhythms and cyclical patterns of day, week, month, and year.[16] Without work, time patterns become confused. One recalls the drifting in T. S. Eliot's "The Wasteland":

> What shall I do. . . . What shall we do tomorrow?
> What shall we ever do?

When duration of unemployment has been prolonged, unemployed workers progress from optimism through

pessimism to fatalism. Attitudes toward the future and toward the community and home deteriorate.[17] Children of long-term unemployed and marginally employed workers uniformly show poorer school grades.[18] And, despite the popular notion that unemployed people fill their "free" time with intensified sexual activities, the fact is that undermined egos of former breadwinners lead to diminished libidos.[19] "There are so many unconscious and group needs that work meets," Winick writes, "that unemployment may lead not only to generalized anxiety, but to free-floating hostility, somatic symptoms and the unconscious selection of some serious illnesses."[20]

Many of the studies revealing the disorganizing effects of unemployment during the Depression have found echoes in recent "ghetto ethnographies." Such studies as Liebow's *Tally's Corner* show these effects to be as much a function of unemployment and marginal employment *per se* as of economic catastrophe. This is so because to be denied work is to be denied far more than the things that paid work buys; it is to be denied the ability to define and respect one's self.

It is illusory to believe that if people were given sufficient funds most of them would stop working and become useless idlers. A recent economic analysis shows that as people increase their earnings and acquire wealth they do not tend to decrease the time and energy that they invest

in work.[21] In another study, when a cross section of Americans were asked if they would continue working even if they inherited enough to live comfortably without working, 80% said they would keep on working (even though only 9% said they would do so because they enjoyed the

work they were doing).[22] Some people may not want to take specific jobs—primarily because of the effects on their self-esteem—but working, "engaging in activities that produce things valued by other people," is a necessity of life for most people.

Some of the most compelling evidence about the centrality of the functions of work in life comes from the recent efforts of women to fill what some interpret as a void in their lives with the sense of identity derived from work. As some social critics have noted, the desire for all that work brings to the individual is at the foundation of the women's liberation movement.

There is also considerable evidence that work has the same meaning among the poor and among welfare recipients that it has for middle-class and employed individuals:

—A recent study for the Labor Department on the work orientations of welfare recipients found that "the poor of both races and sexes identify their self-esteem with work to the same extent as nonpoor persons do." The study found that although people on welfare are as committed to the work ethic as middle-class people, their attitudes differ in that they are not confident that they can succeed on a job. After experiencing failure, they are more likely to accept the dependence on welfare.[23]

—A recent study in South Carolina of 513 underprivileged workers found that the poor did not differ markedly from the middle class in the kind of satisfaction that they derived from work.[24]

—The Office of Economic Opportunity has sponsored a three-year study to assess the validity of the assumption that the working poor would stop working if they were guaranteed an annual income. *Preliminary* findings have shown little slackening in work effort among those urban families receiving a guaranteed income. In fact, hourly

earnings appear to be higher for those in the experiment than for those in a control group. Although it is too early to assess the results of the experiment, there are signs that withdrawal from work effort is not as extensive as some had feared.[25]

In this regard, it must be realized that although *work* is central to the lives of most people, there is a small minority for whom a *job* is purely a means to a livelihood. To them a job is an activity that they would gladly forgo if a more acceptable option for putting bread on their table were available. What little evidence there is on this point indicates that for most such individuals the kinds of jobs that they see open to them do little to provide the sense of self-esteem, identity, or mastery that are the requisites for satisfying work. These individuals turn to other activities (music, hobbies, sports, crime) and other institutions (family, church, community) to find the psychological rewards that they do not find in their jobs. In effect, these activities, for these people, become their real work. This unusual phenomenon helps to explain the small amount of job withdrawal that occurs among welfare recipients. For example, welfare mothers may choose the personally fulfilling work of raising their children to the alternative of a low-level, unchallenging job—the only kind available to them.

The Change in Attitudes toward Work

Although social scientists have long disputed the precise contribution of the Protestant ethic to the genesis of capitalism, they generally agree that thrift, hard work, and a capacity for deferring gratification historically were traits

widely distributed among Americans. Moreover, as part of the legitimacy of the economic system, individual members of our society were to be credited or blamed for their own circumstances, according to the degree of their prosperity.

But the ethic, or what has passed for it, appears to be under attack. Some futurists tell us that automation will make work unnecessary for most people, and that we may as well ignore through separating manpower requirements

for welfare mothers from income maintenance programs. When welfare is examined through the lens of work, we can see the role that job creation and manpower policies can play in limiting dependency, and the legitimate burden of income maintenance that remains.

Work and Welfare

In original conception and intent, welfare is an income maintenance program for those who cannot take care of themselves. The main programs provide categorical aid to the blind, the aged, the disabled, and to families with dependent children (a program originally designed to make it possible for widows and mothers without employable husbands to stay at home and raise their children.)

Increasingly, however, the original purposes and definitions of welfare have lost their force, especially with respect to the Aid to Families with Dependent Children. What was originally defined as a population dependent on the larger community for maintenance and support tends now to be defined in the public's mind as a population of malingerers who ought to be forced to accept work. The result is that persons who cannot take jobs or, by social

agreement, should not take jobs, are now the target of programs designed to make them take jobs.

This change in public perception and policy has two main roots. One is the frustration born of the now-certain knowledge that the need for a Federal public assistance program will always be with us and will not, as was originally hoped, wither away as a result of the growth of a comprehensive contributory social insurance system.[15] The other is the change from widows and orphans to unmarried mothers and illegitimate children as models or prototypes of the AFDC family.[16] ("The AFDC example always thought about," remembers the first Executive Secretary of the Social Security Board, "was the poor lady in West Virginia whose husband was killed in a mining accident, and the problem of how she could feed those kids.")[17] Where the original model of the miner's widow evoked compassion, the new model of the unwed mother evokes deep and widespread resentment.

176 Federal Strategies

Underneath the resentment and the frustration, and giving rise to them, are a host of unverified assumptions about the character and composition of the welfare population; most poor people don't want to work; most people on welfare are black; welfare mothers have babies to increase their welfare benefits; people on welfare live well and easy; most people on welfare want to be on welfare; etc.

Every one of these assumptions is demonstrably false as a generalization, and is true only in the occasional particular. The facts are that most poor people are not on welfare and the majority of poor people not only want to work but do work, year round and full time; black families,

though over-represented, make up less than half of the AFDC caseload; the average monthly payment per recipient on AFDC is $49.60; most mothers on AFDC do want to work—it is not difficult to add to the factual side of this misunderstood issue.[18]

What is so terribly damaging to the prospect of developing constructive programs for dealing with the problems of welfare is that these false stereotypes of poor people, black people, and AFDC families are widely held by the general public. The negative attitudes of most Americans about welfare thus constrain national leaders in their development of policy. Indeed, the existence of these feelings leads to a situation in which the public's "price" for welfare reform is the inclusion of mandatory work requirements for those on welfare, including mothers.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

PUBLIC ASSISTANCE AND SOCIAL SERVICES IN NEW YORK STATE

HELPING PEOPLE TO HELP THEMSELVES

STATE OF NEW YORK

NELSON A. ROCKEFELLER, *Governor*

STATE DEPARTMENT OF SOCIAL SERVICES

ABE LAVINE, *Commissioner*

Information for Applicants and Recipients About:

Aid to the Aged, Blind and Disabled
Aid to Families with Dependent Children
Home Relief (Veteran Assistance)

For extra copies, write Publications Clerk, State Department of Social Services, 1420 Western Ave., Albany, N.Y. 12203. Pub. No. 1098 (11-72 rev.)

NEW YORK STATE
DEPARTMENT OF SOCIAL SERVICES
1450 Western Avenue, Albany, N.Y. 12203

HOW PUBLIC ASSISTANCE WORKS

HELPING PEOPLE TO HELP THEMSELVES

In New York State, this is the goal of public assistance and social services.

This booklet describes the public assistance (welfare) system in New York State which is administered by local

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

departments of social services and supervised by the State Department of Social Services.

It explains the kind of assistance—both money and service—that are available to help people help themselves, in order to strengthen family life and the life of the whole community.

And it tells, too, what is expected from those receiving assistance.

The programs of assistance are paid for with funds provided through taxes.

All of these programs are designed and applied to provide assistance for the men, women and children, who are in need of help. However, money alone is rarely the whole answer. A wide range of social services including training and referrals for jobs and job opportunities are provided to help families and individuals to self-sufficiency. In addition to money help, those in need are given counseling and encouragement so that they can see that the future does offer hope of improvement.

Help is available under several programs.

They are:

Old-Age Assistance
Assistance to the Blind
Aid to the Disabled
Aid to Families with with Dependent Children (ADC)
Home Relief
(Veteran Assistance)

Because the State Legislature has set up a table of grants for every person and family receiving assistance, it is possible for all recipients and families to know exactly what help is available to them under the law.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

If money help is not needed, but services are—medical care, care for a child outside his own home, advice on handling a delinquent youngster, or other services—the last section of the pamphlet, on Services, will tell you what is offered and how to apply.

This booklet provides valuable information which can improve the health, education, and work ability of many people who need that help to put them, or their children, on the road to self-support and independence.

It offers the way and the means of helping people to help themselves—to the extent possible—the goal to which public assistance and social services are committed.

CONTENTS

SECTION I	PAGE
TO APPLY FOR PUBLIC ASSISTANCE	
Who can get public assistance?	2
Income and resources	2
Size of family and monthly allowance schedule	2
How allowances are determined	3
Special allowances for aged, blind or disabled person	3
Identification cards	4
Why applications are accepted or rejected	4
Requirements for each assistance program	4
The Aged: Old-Age Assistance	5
The Blind: Assistance to the Blind	5
The Disabled: Aid to the Disabled	5
Families: Aid to Families with Dependent Children (ADC)	5
Other needy persons and families: Home Relief	6
Veteran Assistance	6
Work program	6

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

Claims against property	7
Income exemptions for recipients of public assistance	7
SECTION II	
HOW ASSISTANCE GRANTS ARE DETERMINED	
An Aid to Dependent Children (ADC) family	11
A Home Relief family	11
An Old-Age Assistance couple	11
An Assistance to the Blind recipient	11
An Aid to the Disabled recipient	12
SECTION III	
OTHER HELP AND SERVICES	
Medical assistance (Medicaid)	13
Family Planning	14
Additional food through food stamps	14
Services for children, families and unmarried mothers	14
Day care	15
Protective services	15
Foster care	15
Adoption	15
Adoption subsidy	15
Services for unmarried mothers	15
Homemaker services	16
Household furniture and equipment	16
Purchase of cooperatives	16
Special care for the aged, blind and disabled	16
Fair Hearings	17
Protection against discrimination	19
APPENDIX	
Regional offices of the State Department of Social Services	20
Local Department of Social Services	20

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

SECTION I

TO APPLY FOR PUBLIC ASSISTANCE—

Contact the nearest office of your local department of social services and arrange for an interview. See Pages 20 and 21 for location.

This is the quickest, surest, and best way to learn if you are entitled to assistance under the law. The people there will help you.

You will be asked to fill out and certify an application form. Important facts, such as your income, resources, and other matters, must be considered. Where there are inconsistencies or gaps in information, or where other circumstances indicate the need for further inquiry, additional information will be sought. Applications are subject to verification.

Emergencies (eviction, home burned out, etc.) are taken care of by the local department the same day you apply for help.

Within 30 days a decision will be made about your eligibility.

If you are not eligible, you will be told so and why.

If you are an employable Home Relief applicant, you will be required to report immediately to the State Employment Service for job counseling and placement. You will be certified as eligible for public assistance if the State Employment Service is unable to place you in a job right away. Your first assistance check will come from the local department of social services. After that, you must report twice a month to the local office of the State Employment

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

Service for employment counseling, job placement service and to pick up your assistance check.

If you are found eligible for public assistance you will be provided with the following: 1) a photo identification card for use in claiming, and cashing your public assistance check; 2) a Medicaid card, which will enable you and members of your family to obtain medical care when needed; and 3) an identification card for purchasing food stamps.

By reading this booklet carefully before you apply for assistance—or at least the section *Who Can Get Public Assistance?* which follows immediately—you will get some idea of the requirements for getting assistance, and what is meant by need, income, and resources. And you will be better prepared to give facts on these matters to the person at the local department who interviews you.

No booklet can answer every question about public assistance. But the people at your local department of social services can. Ask them to help.

WHO CAN GET PUBLIC ASSISTANCE?

Any needy person or family can get help from his local department of social services, if he meets the requirements of State law.

Who is needy? Anyone who does not have enough income or resources to support himself and his dependents.

How much is enough?

The law fixes the minimum amount a family needs to live on and states the amount of public assistance a needy family or needy individual is entitled to.

The amount depends upon:

(1) Whether the family or individual has any income or other resources that can be used for support.

(2) The size of the family.

(3) The public assistance program for which the applicant is eligible.

INCOME AND RESOURCES

What are income and resources?

Wages, earnings from business, farming, etc.

Social Security payments, unemployment insurance, workmen's compensation, disability benefits, pensions.

Real estate and rentals from real estate.

Payments from legally responsible relatives (husbands are responsible for wives, wives for husbands, parents and step-parents for children under 21).

Bank accounts, stocks, bonds, mortgages, other securiites, and life insurance policies which have a face value of more than $500 (other than group or term insurance, on which there is no restriction).

Personal property, such as automobiles, jewelry, business equipment and supplies, etc.

Income from all other sources.

SIZE OF FAMILY AND MONTHLY ALLOWANCE SCHEDULE

The other two things that determine the maximum amount of public assistance—size of family and type of

public assistance program—are shown in the tables of allowances that follow.

The amounts shown in the tables below cover all needs except rent and heat, *for persons without any income or other resources.* An additional allowance is added for rent and heat. The amount allowed for rent is the actual rent, or the ceiling for rent set by the local social services department, whichever is less. When heat is not included in the rent, a heating allowance is granted. The amount for heating is based on a schedule of costs for a particular geographic area. Additional allowances for fuel are granted because of exceptionally severe weather, poor construction of a dwelling, or poor health.

Here are the schedules of monthly allowances (without the rent-heating allowance):

	Number of Persons in Household						For Each Additional Person
	1	2	3	4	5	6	
For Recipients of Aid to Dependent Children and Home Relief	$76	$121	$161	$208	$256	$296	$41
For Recipients of Old-Age Assistance, Aid to the Disabled, and Assistance to the Blind	$84	$134	$179	$231	$284	$329	$45

HOW ALLOWANCES ARE DETERMINED

Here's how to find a monthly allowance for any person or family.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

For a family of four receiving Aid to Dependent Children or Home Relief, use the schedule for Aid to Dependent Children and Home Relief.

Under column 4 the amount is $208. The family would get that amount, $208, plus an allowance for rent and heat. If rent is $80 and heat is $16.60, the family would get $208 plus $96.60, or a total of $304.60—if the family had no income or any other resources.

If an applicant or recipient of public assistance is receiving Old-Age Assistance (OAA), Aid to the Disabled (AD), or Aid to the Blind (AB), use the schedule that covers these programs. Suppose the needy person is single. Under 1 the amount is $84. If the rent and heat cost is $62, the person would get a total allowance of $146—if he had no income or other resources.

Special Allowances for Aged, Blind or Disabled Persons

Aged, blind or disabled persons receiving public assistance are given a special allowance of $10 monthly if living alone, and $6.25 monthly if living with a family. Thus an aged couple would receive a combined special allowance of $12.50. In addition, if the person is unable to prepare meals, he or she receives an additional monthly allowance to pay for meals in a restaurant, as follows: for breakfasts, luncheons, and dinners, $64, and for luncheons and dinners only, $47. In the case of a couple, both of whom are aged, blind or disabled, and both of whom are unable to prepare their meals, each receives the extra $64 allowance for restaurant meals, or a total of $128 monthly.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

Identification Cards

An identification card, with a photograph attached, is issued to all persons receiving any form of public assistance, provided payment is made to them. As a condition for receiving and cashing a public assistance check, presentation of this identification card may be required.

Why Applications are Accepted or Rejected

Under the law, local departments of social services may check on income and other resources to learn the exact need—if any—of the public assistance applicant.

If investigation shows that an applicant has enough income or other resources to provide for himself, assistance cannot be granted.

If investigation shows an applicant hasn't enough money or other means to support himself, the assistance granted will be given to him as long as the need for it exists.

If the need of a person or family on assistance changes, the grant must be changed accordingly. It is the responsibility of a recipient to report such changes to his local department of social services. The department must check from time to time to be sure a recipient is still in need of the amount of assistance he is getting.

Applicants who willfully withhold, conceal or misstate information about income or resources are subject to penalties under the law.

Requirements for Each Assistance Program

In addition to financial need, there are other requirements an individual or family must meet to qualify for certain public assistance programs. Such requirements dif-

fer for each assistance program because each program serves the needs of a different group, such as the aged, the blind, the disabled, and so on.

The Aged: Old-Age Assistance is given only to needy persons who are 65 years of age and over.

The Blind: Assistance to the Blind is provided only for needy persons who are totally blind or have so little vision that they meet the definition of blindness as determined by state law.

The Disabled: Aid to the Disabled is available only to the needy individuals, from 18 years of age to 65, who have chronic diseases or disabilities that prevent them from working, or prevent housewives from taking care of their homes. Disability is determined by a medical examination and how well an individual can perform activities required by employment or homemaking.

Families: Aid to Families with Dependent Children (ADC) is financial assistance given to a family with minor children without sufficient means of support because of the absence, death, or incapacity of a parent, or the unemployment of the father.

This assistance is granted to keep the family together and preserve its home.

The ADC grant is made to the parent—or other relative with whom the children are living—for the benefit of the children.

The assistance covers the needs of the children and the parents, or other needy relatives, who are taking care of

the children. (In some situations relatives who take care of the children are not in need themselves but cannot support the children. In such situations assistance is granted for the children only.)

Assistance is provided for children under 18, or up to age 21 if they are attending school or are enrolled in a course of vocational training.

Assistance is given to a needy pregnant woman from the fourth month of a verified pregnancy to meet her own needs and those of the baby at birth. Necessary medical care is also provided under Medicaid.

In some localities there is a special employment program, WIN (Work Incentive Program), that helps recipients develop and improve their job skills and education through job training, job advice, and employment service for employable ADC recipients. Local departments of social services must send unemployed fathers to the WIN program within 30 days after they have begun to receive ADC grants. Mothers are referred to the training program if their children can be adequately cared for. Children 16 years of age and older who are out of school may also be considered for WIN training. Persons in WIN training receive a special allowance of $30 monthly. (A pamphlet, *WIN, the Work Incentive Program,* is available in local departments of social services in areas of the State where WIN is in operation.)

If a child in an ADC family is born out of wedlock, the local department of social services is required by law to get the mother's cooperation to:

—Legally establish who the father is.

—Locate him if he is missing.

—Check out his ability to support the child, and get that support if possible.

When a child is in need because of desertion or abandonment, the local department of social services must report the desertion or abandonment to the proper law enforcement official. Efforts must then be made—local, statewide, and, if necessary, nationwide—to locate the missing parent and have him or her assume responsibility for the support of the child or children. The parent or relative with whom the child or children are living must cooperate in all such efforts to find a missing parent and in any legal action that might be taken.

Other Needy Persons and Families: Home Relief may be given to needy families and individuals who do not meet the requirements of the other programs. Home Relief would be given, for instance, to needy adults who are not 65 years of age, blind or disabled. For example: A family in which the father is working 100 hours a month or more is not eligible, under federal law, for ADC. If his earnings are not enough to support the family, the family would get Home Relief.

Veteran Assistance, a form of Home Relief, is administered in a few local departments in the State to needy war veterans and their families. The veteran must be honorably discharged or released. In communities where such assistance is not administered, needy war veterans, and their dependents, receive Home Relief.

WORK PROGRAM

All employable Home Relief recipients are required to report twice each month to their local State Employment

Service office for job counseling and placement in a job which they are able to engage. They must pick up their public assistance checks there instead of getting them by mail—they are also required to accept referrals to job openings, and a specific job if it is offered, or to training.

No assistance or care is given for 75 days to a person who voluntarily gives up his job or reduces his earning capacity for the purpose of attempting to qualify for Home Relief.

Employable Home Relief recipients who have been on assistance for 30 days may be assigned to public service work opportunity projects established by local social services districts in governmental agencies if there are no jobs for them in the local economy.

CLAIMS AGAINST PROPERTY

A local department of social services may require a deed, mortgage or lien on any real property owned by recipients in return for the assistance given, except in cases of short-term assistance.

However, a recipient of Old-Age Assistance, Aid to the Disabled or Assistance to the Blind is not required to transfer his property while he is obtaining higher education or training.

A local department of social services cannot enforce any claim against property on which it has a deed or mortgage, before the death of a recipient—unless the State Department of Social Services gives its approval in writing.

And no claim can be enforced against any property of a recipient while that property is occupied by a surviving widow, widower, or child.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

Applicants or recipients may have up to $500 face value life insurance (other than group or term insurance, on which there is no restriction). If an applicant or recipient has life insurance with a face value of more than $500, the local department of social services may require that the amount of insurance be reduced or that the policy be assigned to the department. What action is taken depends upon the health, age, expected length of time the person might be on the assistance rolls, and other facts.

If an adult applicant or recipient does not have life insurance, but has cash, he may have a $500 burial reserve set up under certain circumstances. If he has life insurance with a face value of less than $500, he may have a burial reserve for the difference between the face value and $500.

INCOME EXEMPTIONS FOR RECIPIENTS OF PUBLIC ASSISTANCE

Not all of the earnings of employed recipients are considered as available income. Work expenses are deducted from the total earnings and only what remains is considered as income.

For example, the worker might have such expenses as the cost of uniforms or special clothing required by the job; social security taxes; other federal, state and local taxes; lunches; transportation; union dues; etc. Usually these costs average out to about $60 monthly.

All employed public assistance recipients are entitled to such work-expense exemptions from earned income.

Additional Exemptions: And there are other monthly exemptions employed recipients are entitled to:

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

For ADC recipients, the first $30 of the total family income earned in a month plus one-third of the remainder of that income is exempt. In ADC families the earnings of children who are working part-time are totally exempt if these children are attending school full-time or part-time.

Some aged, disabled or blind recipients can and do work. In such cases, they receive special exemptions.

For Assistance to the Blind recipients, the first $85 of earnings is exempted, plus one-half of the remainder of that income.

For Aid to the Disabled recipients, an exemption of $40 is given for special work expenses.

For Home Relief recipients, homemakers who have outside jobs have an exemption of earned income for special work expenses of $40. Children under 21 years of age not attending school are allowed a work expense exemption of $40. The earnings of children who are working part-time are totally exempt if they are attending school. Other employed persons are allowed a $20 monthly exemption for special work expenses.

For Home Relief recipients there is also a $30 a month training allowance for persons in an approved training program and an exemption of the first $30 each month of earned income.

For Old-Age Assistance recipients, an exemption of $20 is given for special work expenses.

Income from a number of other sources is exempt and is not considered in determining eligibility for public assistance or the amount of assistance an individual or family receives. Among these are:

Old-Age Assistance, Aid to the Disabled and Assistance to the Blind: the first $7.50 per month of any income of these recipients is disregarded in determining their public assistance allowances.

New York State Division of Vocational Rehabilitation: the first $25 of the weekly training allowance.

Job Corps: $50 a month received by a family through a supplemental allotment from a youth in the Corps.

Urban renewal or housing agency: a relocation adjustpayment made by the agency.

Economic Opportunity Act Loans: proceeds of such a loan to a family or individual.

Veteran disability benefits: 15 percent of such an allowance is disregarded for Home Relief, Veteran Assistance, or public home care. Also exempt is that part of the disability benefits needed to attend local meetings of veterans' organizations and to pay annual membership dues.

More information about these programs and benefits can be obtained from local departments of social services.

(*For examples of how all such exemptions are applied, see Section II, HOW ASSISTANCE GRANTS ARE DETERMINED.*)

SECTION II

HOW ASSISTANCE GRANTS ARE DETERMINED

Here are some examples of how all this works out—income, resources, exemptions, etc.

An Aid to Dependent Children (ADC) family: A mother with four children is separated from her husband. He is under court order to pay her $150 a month. The family has no other income or resources.

Say the total monthly ADC grant for all of the family's needs would be $380 if the family had no other means of support. But it does have an income of $150 monthly, so this is deducted from the $380, leaving $230. The family would get a monthly ADC grant of $230.

A Home Relief family: A worker in a family of six is laid off and gets $325 monthly in unemployment insurance benefits, the only income or resource his family has.

Say a monthly Home Relief grant of $380 is necessary for the family for all of its needs. The unemployment insurance benefits of $325 would be deducted from the $380 and the family would get a monthly Home Relief grant of $55.

An Old-Age Assistance couple: An aged couple cannot live on the only income and resource they have—social security benefits of $160 monthly. They apply for Old-Age Assistance to give them the added funds they need.

If they had no income, their Old-Age Assistance grant would be, say, $218 a month for all their needs. And they

would also get an additional $6.25 each monthly because of age. That would give them a total assistance grant of $230.50 monthly.

However, they have $160 in social security which has to be taken into account. But not all of it. The law exempts $7.50 monthly of this income for each of them, or a total of $15. Thus only $145 of the $160 is considered income. Deducting this $145 from the $230.50 leaves $85.50, which would be the couple's Old-Age Assistance grant.

An Assistance to the Blind recipient: A blind recipient has been receiving a monthly grant of, let us say, $152, for all of his needs. This includes a special allowance of $10 for a blind person living alone. He gets a job that pays $295 a month. Even though his wages are now almost double his assistance grant, he is still eligible for some assistance. This is how it works:

First, we have to add up all his exemptions:

The first $85 of his monthly earnings is exempt, plus an additional $7.50. So is half of the remaining $202.50, or $101.25. These exemptions total $193.75.

Say he has an exemption of $60 for work expenses. His total work exemptions then are $60, $85, $7.50 and $101.25, or $253.75 in all. Deducting this $253.75 from his wages of $295 leaves $41.25, the amount of his earnings regarded as income. This $41.25 is deducted from his Assistance to the Blind grant of $152, leaving $110.75, the amount of assistance he is still entitled to receive.

Thus this blind recipient will have a total monthly income of $405.75—$295 in wages and $110.75 in assistance.

Furthermore, additional amounts of his income and other resources might also be exempted if they should be necessary to help him carry out a plan to make himself self-supporting within a year. Such a plan must be approved by the State Commission for the Visually Handicapped.

An Aid to the Disabled recipient: A single man gets a job in a sheltered workshop that pays him $300 a month. Suppose his public assistance allowance for everything is $142 monthly, plus a special $10 monthly allowance because he is disabled, or a total of $152.

He is entitled to a monthly work-expense exemption of, let us assume, $60. That reduces his income from wages of $300 down to $240. Because of his disability, he gets an addtional, special work-expense exemption of $40. So that reduces his income further, to $200. But, this is more than his assistance grant of $152, so he is not entitled to any assistance.

Section III

Other Help and Services

Money is not the only kind of help a needy person or family can get through the local departments of social services in New York State. Many valuable services are available, such as:

Medical care.

Additional food through food stamps.

Special services for children, families, and unmarried mothers.

Special care for the aged, blind or disabled.

Other services are also available; job training; literacy training; and advice and guidance on family problems, home management, budgeting, and other matters. The blind and the disabled are encouraged to undergo medical treatment and rehabilitation to assist them in securing employment, or to be able to take better care of themselves.

Here is information about some of these services. The local departments of social services can supply detailed information about them, and suggest other services to meet other needs. A pamphlet, "How to Get Help for Families Who Need It," is available at all local departments of social services.

Medical Assistance (Medicaid)

All persons who receive public assistance, or are eligible for it, can get any necessary medical care through Medicaid. Other individuals and families not on public assistance or eligible for it, but with incomes below a prescribed amount, can also receive medical care. This care includes doctors' and hospital services, and all services and supplies needed to protect a person's health.

The provider of medical services and supplies (hospitals, physicians, dentists, pharmacists, and so forth) is paid by the local department of social services.

Medicaid pays for:

Necessary services provided by physicians, optometrists, podiatrists, chiropractors, and other professional personnel; essential dental services, such as the

extraction of teeth, filling of cavities and routine preventive dental care, are also covered.

Care in hospitals, nursing homes, and other medical institutions.

Out-paient or clinic services.

Family planning services provided by a physician, clinic, or Planned Parenthood center physicain, and prescribed medication and devices.

Home health care services, including home nursing services and services of home health aides.

Drugs, sickroom supplies, eyeglasses, and prosthetic appliances except dental prosthetic (false teeth) appliances. However, false teeth and teeth-straightening (orthodontic) appliances can be paid for if needed for reasons of health or employment and approved in advance.

Health screening services for children under 21.

Complete information about Medicaid is in the pamphlet, *Medicaid, How New York State Helps When Illness Strikes.* Copies are available at all local departments of social services.

Family Planning

Where appropriate, all public assistance recipients are personally advised periodically of the availability at public expense of family planning services for the prevention of pregnancy. These services are made available to all who desire them. No recipient, however, is required to use these services.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

ADDITIONAL FOOD THROUGH FOOD STAMPS

Additional food is available to all individuals and families receiving public assistance and all other persons whose low income qualifies them.

This food is available through food stamp plans operated by all local departments of social services. Under the food stamp plan, an individual or family obtains extra food by buying food stamps, which can be used to purchase food worth much more than the cost of the stamps.

Through these food plans, a family can increase its food supply without spending any more money for food than it does now.

Advice on how to get the most benefits from foods is also available through local departments of social services.

SERVICES FOR CHILDREN, FAMILIES AND UNMARRIED MOTHERS

Services are available to all eligible children who need them, whether or not they are receiving public assistance. If the local department does not provide the needed service itself, it will help get it for the family or the child from another agency.

Day Care: Day care is available for children of school age and pre-school age when the mother is employed, receiving occupational training or is incapacitated.

This care is provided in day care centers, family day care homes, in the recipient's own house or in the home of friends, relatives or neighbors.

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

Day care centers give health care and offer educational opportunities for the children.

Protective services: Children who are seriously neglected, abused, or subjected to demoralizing home conditions and acts by their parents, when brought to the attention of the local department, are helped by these services. Child welfare experts work intensively with the families to correct these situations and protect the children.

Foster care: Children who need to be cared for outside their own homes are cared for in foster homes by foster parents who are selected because they can give the affection and individualized supervision that children need.

Group care for children is provided in child-caring institutions and group residences.

Adoption: Children who are without families or homes are placed for adoption with families that give them love, care, and the opportunity to grow to a healthy and happy adulthood in families of their own.

The State Department of Social Services maintains a statewide Adoption Exchange that serves all authorized adoption agencies in the State. The exchange broadens the opportunities for prospective adoptive parents to have children placed with them by making their desire to adopt known to agencies unable to place children in their own communities.

Adoption subsidy: Families that adopt children, but need some financial help to support these children, can

receive funds for this purpose from the local department of social services to the extent needed and for the time necessary.

Adoption subsidy payments are also made where a child has special, unusual, or significant physical or emotional handicaps which are an obstacle to his adoption. Subsidy payments are made for medical, surgical, psychiatric and other special costs, services and devices.

Services for unmarried mothers: Assistance is given to a needy unmarried mother during her pregnancy. Short-time foster care is provided for the out-of-wedlock child in cases where the mother needs time to make a sound, permanent plan for the baby and herself. During this time the mother gets public assistance if she needs it.

If the mother decides to place the child for adoption, this service is provided. If she decides to keep the child, she is helped to carry out such a plan.

Homemaker services: Homemaker help is provided for children when the mother in a needy family is physically or mentally ill, or otherwise unable to provide the care children need. The homemaker also helps the mother with home management problems.

Household furniture and equipment: Persons in need of public assistance who have lost necessary furniture and clothing in a fire, flood or other catastrophe can have these items replaced by the local department of social services if they cannot obtain replacements otherwise.

The local department will also provide funds for the essential repair of heating equipment, cooking stoves, and

refrigerators if recipients are unable to get such items fixed.

Purchase of cooperatives: Public assistance recipients may be granted up to $750 toward the purchase of a housing unit in a cooperative. The recipient's equity in such cooperative housing must be assigned to the local department of social services.

Special Care for the Aged, Blind and Disabled

A needy aged, blind or disabled person may receive public assistance in his own home, some other family home, a private boarding home, a private convalescent home, a home for the aged, a residence for the mentally retarded, or other suitable institution or facility.

Allowances are also provided for needy persons living in the same household who are essential in providing care for the recipient.

A needy person who requires medical care in an institution can obtain it through Medicaid in a public home infirmary (operated by a local department of social services), an approved nursing home, or a public or voluntary hospital. Persons 65 years of age or over can be cared for in a State institution for mentally disabled patients as Medicaid recipients.

Recipients in homes for the aged, nursing homes, or similar places receive a cash allowance for clothing and incidentals if these needs are not furnished by the institution, and if they have no other resources.

Blind individuals are eligible to receive a wide variety of services from the State Commission for the Visually Handicapped, including comprehensive vocational training,

help in adjusting to blindness, guidance in operating small businesses, and other services.

FAIR HEARINGS

If a needy person is seeking or receiving

Public Assistance

Medicaid

Food Stamps

Mandated Services

and is dissatisfied with any action taken or planned by the local department of social services, that person has the right to appeal to the State Department of Social Services for a Fair Hearing.

Here are some examples of situations in which an individual would be entitled to a Fair Hearing:

Thirty days have passed and the person has heard nothing about an application for Public Assistance,

Medicaid, Food Stamps, or Mandated Services.

More than 30 days ago the individual was notified that some or all of the above benefits would be received, but none have been received.

The person applied for some or all of the above benefits, and was told that some or all of them would not be received.

Some of these benefits are being received but the individual involved believes that he or she is entitled to more.

The person has been officially notified that welfare payments will be suspended, reduced, or stopped, or that the Medicaid authorization will be terminated.

The Food Stamp authorization or Mandated Services have been reduced or eliminated.

Part of the welfare grant comes in a check made out both to the individual and to the provider of services such as the landlord, or the gas or electric company.

In a Fair Hearing all the facts—the information supplied by the individual involved and by the local department—are considered by a State Hearing Officer. It is his job to make sure all the facts are brought out.

On the basis of all of this information, evidence, and testimony, the State Commissioner of Social Services makes a decision as soon as possible. The person involved receives a copy of this decision promptly, as does the local department of social services.

If the decision is in favor of the person who asked for the Fair Hearing, the local department is directed to settle the complaint promptly and fully, and to provide every entitlement under the law.

If the State's decision is against the individual, that person has the right to go to court to have it reviewed.

If an individual applies for a Fair Hearing because of a notification that welfare payments will be suspended, reduced, or stopped, or that Medicaid authorization will be terminated, no change will be made in payments or benefits until the entire Fair Hearing process has been completed. In such cases the individual must apply for the Fair Hearing before the date that his public assistance

grant or medical assistance is to be stopped or reduced which is usually 15 days from the date of notification. The individual will then receive a written notification of the time and place of his hearing. A person must apply for a Fair Hearing within 60 days from the denial of his application or the discontinuance or reduction of his grant or medical assistance or he will not be able to have his claim reviewed by the Fair Hearing process.

A person who applies for a hearing is entitled to receive from the local social services department allowances for transportation, child care and other expenses necessary to attend his hearing.

A lawyer, a friend, or anyone else an individual chooses to provide help or advice can accompany him or her to a Fair Hearing.

The local social services department will allow an individual and his representative to examine all the facts, evidence, and other material it will present at the hearing to show why it made the decision it did. For permission to examine this material, a request must be made to the local department.

At the Fair Hearing the individual and his representative will have the opportunity to question or cross-examine witnesses and representatives from the local department, and examine any documents the department presents to support its decision.

A complete copy of the State's Fair Hearing regulations will be sent to all persons who apply for a Fair Hearing.

Fair Hearings are provided by law to protect individuals who need protection. They are available to every applicant for or recipient of Public Assistance, Medicaid, Food Stamps, or Mandated Services.

Persons applying for a Fair Hearing should visit, telephone, or write the State Department of Social Services Fair Hearing Office nearest their home. Addresses of these offices are listed below:

New York City:	Two World Trade Center New York, N.Y. 10047 Tel: (212) 488-6550
Albany:	74 State Street Albany, N.Y. 12201 Tel: (518) 474-4142
Buffalo:	125 Main Street Buffalo, N.Y. 14203 Tel: (716) 842-4377
Rochester:	119 Main Street East Rochester, N.Y. 14604 Tel: (716) 454-4272
Syracuse:	333 East Washington Street Syracuse, N.Y. 13202 Tel: (315) 473-8413

Protection Against Discrimination

Any of the following actions by a local department of social services, agency, institution, or other facility providing care or service under the Public Assistance, Medicaid, Food Stamps, or Mandated Services programs is considered discriminatory treatment when based on religion, race, color, or national origin:

Denial of aid, care, or other benefits.

Segregation or separate treatment.

Restrictiton in any way in the enjoyment of any advantage or privilege enjoyed by others.

Treatment which is different from that afforded others in regard to determination of eligibility or other condition which must be met (including programs to provide employment or reduce unemployment).

If a person believes he is being discriminated against because of his religion, race, color, or national origin, he should complain to his local department of social services, to the State Deparement of Social Services, or to the Office of Civil Rights in the U.S. Department of Health, Education, and Welfare, 26 Federal Plaza, New York, N.Y. 10007. The complaint will be investigated and any discrimination ended. If necessary, a hearing will be held.

APPENDIX

REGIONAL OFFICES OF THE STATE DEPARTMENT OF SOCIAL SERVICES

Western Region:	119 Main Street East Rochester, N.Y. 14604
Eastern Region:	74 State Street Albany, N.Y. 12201
Metropolitan Region:	Two World Trade Center New York, N.Y. 10047

LOCAL DEPARTMENTS OF SOCIAL SERVICES

Following are the addresses of all local departments of social services in the State.

ALBANY: 28 Howard St., Albany 12207

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

ALLEGANY: County Home, Angelica 14709
BROOME: 901 Upper Front St., Binghamton 13901
CATTARAUGUS: County Home, Machias 14101
CAYUGA: County Office Bldg., 160 Genesee St., Auburn 13021
CHAUTAUGUA: Mayville 14757
CHEMUNG: 203-209 William St., Elmira 14901
CHENANGO: County Office Bldg., Norwich 13815
CLINTON: 10 Healey Ave. (Mail-P.O. Box 990) Plattsburgh 12901
COLUMBIA: 610 State St., Hudson 12534
CORTLAND: 133 Homer Ave., Cortland 13045
DELAWARE: 126 Main St., Delhi 13753
DUTCHESS: County Office Bldg., 22 Market St., Poughkeepsie 12601
ERIE: 95 Franklin St., Buffalo 14202
ESSEX: Court House, Elizabethtown 12932
FRANKLIN: Court House, Malone 12953
FULTON: County Bldg., Johnstown 12095
GENESEE: 3837 West Main Rd., Batavia 14020
GREENE: 465 Main St., Catskill 12414
HAMILTON: Court House, Lake Pleasant 12108
HERKIMER: County Office Bldg., Herkimer 13350
JEFFERSON: 173 Arsenal St., Watertown 13601
LEWIS: County Home, Lowville 13367
LIVINGSTON: County Home, Geneseo 14454
MADISON: Wampsville 13163
MONROE: 111 Westfall Road, Rochester 14620
MONTGOMERY: County Office Bldg., Fonda 12068
NASSAU: Administration Bldg., County Seat Drive, Mineola 11501
NIAGARA: 100 Davison Road, P.O. Box 506, Lockport 14094
ONEIDA: County Office Bldg., 800 Park Avenue, Utica 13501

New York State Department of Social Services, "Helping People to Help Themselves" Publication No. 1098, Plaintiff's Exhibit "B".

ONONDAGA: County Office Bldg., 600 S. State St., Syracuse 13202
ONTARIO: 15 Court St., Canandaigua 14424
ORANGE: Orange Farm Road, Box Z, Goshen 10924
ORLEANS: County Home, Albion 14411
OSWEGO: County Office Bldg., Mexico 13114
OSEGO: County Office Bldg., 197 Main St., Cooperstown 13326
PUTNAM: 2 Mahopac Place, Mahopac 10541
RENSSELAER: 133 Bloomingrove Drive, Troy 12180
ROCKLAND: 61 South Main St., New City 10956
ST. LAWRENCE: County Home, Canton 13617
SARATOGA: County Complex, Bldg. A, Ballston Spa 12020
SCHENECTADY: 487 Nott St., Schenectady 12308
SCHOHARIE: Professional Bldg., Schoharie 12157
SCHUYLER: County Office Bldg., Watkins Glen 14891
SENECA: County Road, 118, Box 179, RD #3, Waterloo 13165
STEUBEN: County Home, Box 631, Bath 14810
SUFFOLK: 75 Fourth Ave., Bay Shore, L.I. 11706
SULLIVAN: Box 231, Liberty 12754
TIOGA: County Home, RD #1, Owego 13827
TOMPKINS: 108 Green St., East, Ithaca 14850
ULSTER: County Office Bldg., 244 Fair St., Kingston 12401
WARREN: County Municipal Ctr., Lake George 12845
WASHINGTON: 15 Church St., Granville 12832
WAYNE: 16 William St., Lyons 14489
WESTCHESTER: Room 432 County Office Bldg., 148 Martine Ave., White Plains 10601
WYOMING: 466 North Main St., Warsaw 14569
YATES: County Office Bldg., Court St., Box 257, Penn Yan 14527

CITY DEPARTMENT OF SOCIAL SERVICES
NEW YORK CITY: 250 Church St., New York 10013

New York City Human Resources Administration, 1972 Annual Report, Page 11, Plaintiff's Exhibit "C".

1972 ANNUAL REPORT

NEW YORK CITY
HUMAN RESOURCES ADMINISTRATION

John V. Lindsay, Mayor
Jule M. Sugarman, Administrator

HRA PUBLIC AFFAIRS
Robert F. Carroll, Deputy Administrator
250 Church Street, New York, New York 10013

INCOME MAINTENANCE (IM)

So vast were the changes and improvements in the Income Maintenance program during 1972 that many of the results will not be documented for some time. However, even at this early stage, the systematic overhaul of the welfare administration—backed up by sound technology and systems development—has led to a large reduction in the cost of providing financial assistance, the beginning of a long-term reversal in the growth of the welfare rolls, and much more efficient service to clients.

Before detailing these changes, here are the types of income assistance offered, the numbers and categories of persons aided, and the amounts and sources of funds for these activies.

Categories of Income Assistance

1. AID TO DEPENDENT CHILDREN (ADC)

Financial assistance to families with children under 18 (or under 21 if they attend school) without sufficient means

New York City Human Resources Administration, 1972 Annual Report, Page 11, Plaintiff's Exhibit "C".

of support because of the absence, death, or incapacity of the parent(s).

ADC Caseload: 248,519 (December 1972)

Children:	626,652	
Adults:	257,144	
ADC Total Persons		883,796
ADC Funding 1972		
Average monthly grant per case (December)		$264.17
Average monthly grant per person		$ 74.28
City funds	$208.1 million	
State funds	208.1 "	
Federal funds	414.9 "	
Total ADC Funds, 1972		$831.2 million

2. Aid to Dependent Children with Unemployed Parents (ADC-U)

Financial assistance to families with children under 18 (or under 21 if they attend school) without sufficient means of support because of the unemployment of the father.

ADC-U Caseloads 3,637

Children:	10,569	
Adults:	7,098	
Total ADC-U Persons		17,667
ADC-U Funding 1972 (Combined with ADC for City, State, Federal Breakdown)		
Average monthly grant per case (December)		$317.92
Average monthly grant per person		$ 65.45

New York City Human Resources Administration, 1972 Annual Report, Page 11, Plaintiff's Exhibit "C".

3. Aid to the Disabled (AD)

Financial assistance to those 18-65 who have chronic diseases or disabilities that prevent them from working.

AD Caseload: 111,503

Total AD Persons		115,032
AD Funding 1972		
Average monthly grant per case (December)		$148.68
Average monthly grant per person		$144.12
City funds	$58.9 million	
State funds	58.9 "	
Federal funds	79.0 "	
Total AD funds		$196.9 million

4. Home Relief (HR)

Financial assistance given to those who are needy but wi o do not meet the eligibility requirements of other public assistance categories. Temporary illness, injury, discharges from employment, and layoff are a few of the reasons for seeking Home Relief assistance.

HR Caseload: 66,751

Children:	60,531	
Adults:	81,592	
Total HR Persons		142,123
HR Funding 1972		
Average monthly grant per case (December)		$158.41
Average monthly grant per person		$ 74.40
City funds	$58.3 million	
State funds	58.3 "	
Federal funds	14.7 "	
Total HR funds		$131.5 million

Testimony of Mr. Barry Van Lare in *Problems in Administration of Public Welfare Programs*, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

PROBLEMS IN ADMINISTRATION OF
PUBLIC WELFARE PROGRAMS

HEARINGS

BEFORE THE

SUBCOMMITTEE ON FISCAL POLICY

OF THE

JOINT ECONOMIC COMMITTEE

CONGRESS OF THE UNITED STATES

NINETY-SECOND CONGRESS

SECOND SESSION

PART 1

MARCH 20; APRIL 11, 12, AND 13, 1972

Printed for the use of the Joint Economic Committee

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1972

80-329

For sale by the Superintendent of Documents,
U.S. Government Printing Office
Washington, D.C. 20402-Price $1.50

Testimony of Mr. Barry Van Lare in Problems in Administration of Public Welfare Programs, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

PROBLEMS IN ADMINISTRATION OF
PUBLIC WELFARE PROGRAMS

THURSDAY, APRIL 13, 1972

CONGRESS OF THE UNITED STATES,
SUBCOMMITTEE ON FISCAL POLICY
OF THE JOINT ECONOMIC COMMITTEE,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 110, U.S. District Courthouse, New York, N.Y., Hon. Martha W. Griffiths (chairman of the subcommittee) presiding.

Present: Representative Griffiths.

Also present: James W. Knowles, director of research; Alair A. Townsend, technical director; James R. Storey, staff economist; George D. Krumbhaar, Jr., minority counsel; and Trina Capobianco, administrative secretary.

Chairman GRIFFITHS. We begin this morning with Mr. Barry Van Lare, acting commissioner, New York State Department of Social Services.

STATEMENT OF BARRY L. VAN LARE, ACTING COMMISSIONER, NEW YORK STATE DEPARTMENT OF SOCIAL SERVICES

Mr. VAN LARE. Welfare is one of the most complex and expensive programs administered by government today. It is also one of the major growth areas, in terms of dollars expended.

In New York State in 1958 welfare expenditures were slightly over $400 million. This year we estimate that they

Testimony of Mr. Barry Van Lare in Problems in Administration of Public Welfare Programs, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

will exceed $4 billion. For next year they may increase another $250-$350 million—with about $100 million of that increase coming from the State treasury alone.

There can be no doubt that welfare is a large problem, but it is equally important to realize that it is a complex and changing issue as well.

In part, this complexity comes about because, in my view, when we taik about welfare, we are usually talking about two or more separate and distinct problems.

First, we are talking about the poor, or more accurately poverty, the social and economic problems of those at the lower income levels in our Nation.

Second, we are talking about the "welfare system," the methods we use to determine who is poor, what they are entitled to, and how they are to be treated.

To complicate it further, we also usually talk from two points of view: First, we talk about those things which we all know to be true—usually things relating to the character and behavior of poor people and, it is tragic, that all too often this category of knowledge cannot be altered or changed by the second, the things which we can actually prove to be true.

Under these circumstances we are often forced to try to solve problems relating to appearances, rather than to address the real causes of poverty or the real problems of welfare administration.

All too often, it is easier to accept the myths and half-truths about welfare, than it is to undertake the hard work necessary to actually determine what is happening.

Because of this climate we face a particularly difficult problem in seeing that the public fully understands what we are trying to do and why we are trying to do it.

Testimony of Mr. Barry Van Lare in Problems in Administration of Public Welfare Programs, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

However, in attempting to try and solve the problems of welfare, it appears to me to be most useful to approach them from three specific directions:

First, we must deal with the administrative systems, itself; the abuses and misuses:

Second, with the characteristics or activities of the poor which lead to dependency and which are subject to change —either through corrective programs and incentives, or through changes in the emphasis of the system itself.

Finally, with the root causes of poverty, such as poor housing and discrimination—problems which are not subject to the control of the welfare department, but which can only be solved on a broader social basis.

To date, we have often failed to differentiate among these factors in our own work and in our public relations. It has become a tragic truth that many—legislators, administrators, and the public alike— no longer believe that government can be made to work. As a result administrative or systems failures are often accepted as inevitable and little or no effort is made to correct them.

Frankly, I believe that many of the problems of welfare and other governmental responsibilities can be solved, but I also believe that they must be addressed in manageable units. We must not promise more than we can deliver.

It is, therefore, most encouraging that the Joint Economic Committee has decided to conduct public hearings in regard to the administrative aspects of the welfare program.

While changes in administration will not solve the problem of poverty, such changes can help restore the people's confidence in government's ability to do a job and do it well.

Testimony of Mr. Barry Van Lare in Problems in Administration of Public Welfare Programs, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

However, this emphasis on administration should not detract from current efforts in Congress both in regard to fiscal relief for the States and localities and in regard to a fundamental reform of the basic welfare programs.

Administration can be improved but our fundamental programs are also in need of major revisions.

• • • • • •

[p. 362] and in the attitude of the public assistance recipients themselves; that it's viewed as a constructive program.

There are some frustrations in it, but it indicates that, on the part of the system itself, there is a commitment that where work is available, the public assistance recipient is expected to compete for it, as does anybody else in the economy.

Chairman GRIFFITHS. What is considered a suitable job?

Mr. VAN LARE. We do not use for our program the definition of suitability. We use available and able to perform as the criteria. The obvious preference is to get the job which pays the highest money and makes the best use of the skills that the person referred may have. But under the current situation we are operating under the basic policy that if a placement exists it should be taken. If, for example, you are talking about a trained typist, and typing jobs are not available but file clerk jobs are available, we would make that kind of a referral.

First preference is given to the job that the person has had experience in, and then to available jobs in relationship to the earning capability.

Chairman GRIFFITHS. I remember reading a story in Detroit about a woman who worked for the city. She made, I believe, something like $4,800 a year. She had a child

Testimony of Mr. Barry Van Lare in Problems in Administration of Public Welfare Programs, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

who had some sort of disease and they had to go to Ann Arbor, University of Michigan Hospital.

Her husband had left her. She found that, by quitting the job and going on welfare, she was in much better circumstances.

Do you think that there is this consideration among people?

Mr. VAN LARE. I honestly don't know. There are combinations of circumstances where, with a combination of service benefits, medicaid benefits and the public assistance payments themselves, an individual or a group of individuals might feel public assistance is a better, easier, or more remunerative way of life than working in the general economy.

Chairman GRIFFITHS. No income tax, no social security tax, no attachment on your salary.

Mr. VAN LARE. I think the only thing I would suggest we compare that to is the lower living standard, the Bureau of Labor Statistics' lower living standard for New York City. For the current year, this is something in the range of $7,500 to $7,900. It may be even higher than that.

The public assistance payment for the same size family is about $3,756.

Chairman GRIFFITHS. But that is cash.

Mr. VAN LARE. That is cash, but I think when you look at what that cash will buy you, that it's not a choice which in most instances a recipient would make. However, I think you will find that in a group of 1,800,000 people, and that is approximately what we have on welfare, some have said, "I would rather get that level of payment than work," or, "I would rather get a subsidy at that level of payment

Testimony of Mr. Barry Van Lare in Problems in Administration of Public Welfare Programs, Hearings Before the Subcommittee on Fiscal Policy, Joint Economic Committee, 92nd Cong., 2d Sess. Part I, Pages 257-258, 362, Plaintiff's Exhibit "D".

rather than increase my earnings or work longer than I am doing now."

But I question, if that is the line of reasoning, that the public assistance payment levels themselves, or even the combination of services, are so liberal as to encourage people to leave work and to go on public assistance rolls.

Excerpts from Bowen, W.G. and Finegan, T.A., *The Economics of Labor Force Participation*, Plaintiff's Exhibit "E".

THE ECONOMICS
OF LABOR FORCE
PARTICIPATION

By William G. Bowen
and T. Aldrich Finegan

Princeton, New Jersey
Princeton University Press
1969

Other Income

The next to last individual characteristic we shall relate to the labor force participation of prime-age males is their "other income." This strange-sounding variable is a Census construct which is defined to include all money income received from sources *other* than wages or salary or self-employment; rental income, interest, dividends, alimony, pensions, and welfare payments all meet this test.

The analytical framework set forth in Chapter 2 leads us to expect a negative relation between the amount of other income received annually by any population group and the group's labor force participation rate, other things equal. The more other income a person has, the better able he is to afford not to work; and if we make the usual assumption that leisure is a normal good, the *ceteris paribus* proposition that other income and labor force participation will be inversely related follows directly.

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

In the case of prime-age males, however, nonparticipation in the labor force may not be regarded as a "good thing," but rather as a mark of shame; therefore, there is less reason to expect the above line of reasoning to hold for this group than for most others. Nevertheless, Table 3-8 does reveal an unmistakable tendency for labor force participation rates to decline as the amount of other income rises, at least in the range below $3,000. This pattern holds not only for the entire group of prime-age males, but also for the "single" males and the Negro males considered separately.

The intercity regression for prime-age males for 1960 also yields remarkedly consistent results. After allowing for the effects of other variables, we find that for each $100 by which a "typical" metropolitan area's median amount of other income exceeded the all-SMSA average, the participation rate for prime-age males in the SMSA was 0.29 of a percentage point below the all-SMSA average. The *t*-value of this regression coefficient is over 3—easily significant at the 1 percent level.[53]

[53] The intercity regression which contains this result is presented in full in Table 4-1, run 11. Not only is the intercity result consistent with the 1/1000 result in direction of effect, it is also very similar in terms of magnitude. The intercity coefficient implies that a difference of $1,000 in other income is associated with a difference in participation rates of about 3 percentage points; this is roughly the average difference between participation rates associated with the various categories of other income in the 1/1000 analysis—and the categories of other income in the 1/1000 analysis go up in jumps of about $1,000. However, we do not attach much significance to comparisons of this kind, for reasons explained in the section of Chapter 2 dealing with data and methods. (The 1/1000 data measure differences in other income among individuals and the intercity regressions measures differences in median levels of other income among SMSA's.) Hence, we regard this similarity more as a curiosity than anything else.

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

In intepreting the negative association between other income and $L_{M25\text{-}54}$, it is well to pay attention to the *amounts* of other income involved. As can be seen from Table 3-8, less than 2 percent of all prime-age males received as much as $3,000 of other income during the year; and the sta-

TABLE 3-8

Other Income and Labor Force Participation: Prime-Age Males (Total, "Single,"[a] and Negro) in Urban Areas, Census Week of 1960

Population group by other income in 1959	Number in sample	Percent of population	Labor force participation rate Unadjusted	Labor force participation rate Adjusted[b]
I. ALL MALES				
<$500	19.943	89.0	97.5	97.5
$500-999	1,199	5.4	93.2	93.4
$1,000-1,999	688	3.1	87.7	87.5
$2,000-2,999	230	1.0	83.9	83.6
$3,000-4,999	196	0.9	91.3	90.5
$5,000+	159	0.7	85.6	84.3
Total	22,415	100.0		
F-ratio	103.05**			

Source: 1/1000 Sample. See Appendix Table A-1 for the derivation of the figures for all males, Appendix Table A-2 for the single males, and Appendix Table A-3 for Negro males.

[a] "Single" here includes all males not married with wife present.

[b] For the effects of age, marital status, color, and schooling.

[c] Not shown for lack of observations.

** Significant at 1 percent level.

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

II. "SINGLE" MALES				
<$500	3,364	88.0	91.9	92.0
$500-999	240	6.3	82.1	82.0
$1,000-1,999	124	3.2	67.7	67.3
$2,000-2,999	44	1.2	52.3	52.5
$3,000-4,999	28	0.7	78.6	77.7
$5,000+	23	0.6	60.9	59.4
Total	3,823	100.0		
F-ratio	41.40**			
III. NEGRO MALES				
<$500	2,072	91.4	94.6	94.6
$500-999	117	5.2	81.2	81.4
$1,000-1,999	47	2.1	66.0	66.3
$2,000-2,999	15	0.7	60.0	61.2
$3,000-4,999	13	0.6	92.3	93.2
$5,000+	3	0.1	c	c
Total	2,267	100.0		
F-ratio	23.00**			

tistically significant drops in participation rates are associated with increases in other income from less than $500 per annum to the $500-999 range, from $500-999 to $1,000-1,999, and from $1,000-1,999 to $2,000-2,999.[54]

It hardly seems likely that men between 25 and 54 years of age *who were able to earn a good income* by participating in the labor market would choose not to participate because they received somewhere between $1,000 and $3,000 per annum from other sources—it takes more money than this to qualify as a member of the idle rich! It seems

[54] See Appendix Table A-1 for the matrix of *t*-values.

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

more likely that most of the men receiving $1,000-3,000 of other income and not participating in the labor force are men who would have had difficulty finding employment, and that if they had found jobs they would not have commanded large salaries. In short, our hunch is that the possession of small amounts of other income serves mainly to permit some prime-age males who would otherwise have had a tenuous place in the labor market to stay out altogether.

It is but a short step from his interpretation to another (complementary) explanation for at least a part of the negative association between other income and labor force participation. Some men no doubt received other income *precisely because they were out of the labor force.* Public assistance and social security payments, periodic receipts from insurance companies, and periodic contributions for support from persons who are not members of the household are all forms of other income, and payments of this sort are of course frequently related to inability to work. Still other men may have dropped out of the labor force after having exhausted their unemployment compensation benefits (and their hope of finding a new job); these benefits are also included in other income, and payments received in 1959 would have been counted as such, if reported.

Both welfare payments and unemployment compensation benefits tend to be relatively small, and their presence at the lower end of the other-income scale may explain why the labor force participation rate is higher for men with $3,000-4,999 of other income than for men with smaller amounts. Quite probably a higher percentage of men with $3,000-4,999 of other income received forms of other in-

come not attributable to their labor force status (dividends, interest, rent). However, it hardly seems likely that the significant drop in the adjusted participation rate as we move from the $3,000-4,999 bracket to the $5,000 and over level of other income can be explained by arguing that persons in the top other-income bracket are receiving above average amounts of welfare payments. The relatively low participation rate for men with $5,000 or more of other income probably ought to be interpreted as a straightforward manifestation of the income effect. The open-ended nature of this category means that some members may have received very large amounts of property income and, as a consequence, simply elected not to work.

In seeking to explain differences in the association between L_{M25-54} and other income for "single" men and Negro men, as compared with all males, recognition of differences in the prevalence of welfare is again helpful. There are reasons for suspecting that the welfare payments are relatively more common among unmarried males and Negro males than among all prime-age males. Inspection of the relation between other income and educational attainment for all males and for Negro males also supports this conjecture. For the entire group of prime-age males, there is a positive association between educational attainment and other income, to be expected if the property income component of other income were predominant. For

Negro males, however, the percentage having some other income was actually higher among those who had never been to college than among those with some college education; this is hard to explain except on the grounds that

welfare payments account for a larger portion of other income going to this group.[55]

A relatively greater prevalence of the welfare type of other income would also help to explain why even a small amount of such income seems to have a much more pronounced effect on the labor force participation of "single" men and Negroes than on the participation of all males 25-54. Comparing panels II and III of Table 3-8 with panel I, we see that the groups of "single" and Negro males having $1,000-1,999 of other income had participation rates more than 25 percentage points lower than the rates for "single" and Negro males with less than $500 of other income; the comparable differential for all prime-age males was only 10 percentage points.

The likelihood that causation flows in both directions—from non-participation in the labor force to receipt of other income, especially for the Negro and "single" male groups, as well as from other income to nonparticipation—means that over most of its range[56] the association reported in Table 3-8 cannot be interpreted as a pure measure of the effect of level of income on labor force decisions. To obtain a purer measure, it would be necessary to eliminate from the measure of other income all forms of income which are themselves affected by a person's current labor force status, and at the present time this is impossible.[57]

---

[55] The data on the relation between educational attainment and other income were obtained from the 1/1000 Sample of the 1960 Census.

[56] As noted above, we regard the relationship between L_{M25-54} and other income at the top of the other income range as the exception to this general statement.

[57] At one stage of our work we did try an even broader measure of income not earned by the subject himself—"other

(footnote continued on following page)

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

It is possible, however, to obtain a reaonably satisfactory measure of public welfare expenditures per capita (including cash assistance) in each of the 100 largest SMSA's

during fiscal 1962.[58] Economists have long recognized that

(footnote continued from preceding page)

family income," which was defined as total family income less income from employment earned by the subject. (See our article in the *American Economic Review*, May 1966, pp. 567-582.) However, as Lee Hansen implied in his comment on this article, this measure may reflect even more two-way causation than other income, since the wife and other family members may enter the labor market (and thus add to the man's "other family income") because of his nonparticipation. In fact, comparison of the results obtained by substituting other family income for other income in these regressions fails to reveal any significant differences.

The existence of two-way causation not only makes interpretation of the association between other income and labor force participation rates difficult, it also raises the danger that the net regression coefficients (and hence the adjusted participation rates) for the other sets of explanatory variables included in the regression will be distorted. To check the seriousness of this danger, we reran all three of our multiple regressions based on the 1/1000 Sample (for all prime-age males, "single" males, and Negro males) without the other income variable. The coefficients of the other variables (schooling, color, age, marital status) were largely unaffected by dropping other income from the regressions.

[58] Expenditures by both state and local governments are included. The source of the expenditure data is the *1962 Census of Governments*, Vol. V. Table 12. Per capita expenditures on public welfare are the product, of course, of the fraction of the population receiving welfare payments and the average payment per recipient. Expenditures per recipient would have been a cleaner measure of what a person might expect to receive, but these data could not be obtained for SMSA's. Accessibility of benefits is an important consideration in its own right, however, and by

(footnote continued on following page)

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

the availability of welfare payments may erode the willingness to work,[59] and in an effort to test the implications for labor force participation of this proposition. We examined the relationship among metropolitan areas between public welfare expenditures per capita in 1962 and the labor force participation rates of prime-age males in the census week of 1960.[60]

If the availability of welfare payments did reduce effectively the incentive to participate, we should expect to find a negative association between welfare expenditures per capita and $L_{M25\text{-}54}$. But a negative association could also result from the reverse chain of causation: the presence of a large number of persons unable to participate in the labor force leading to large welfare expenditures. Thus, the statistical cards are at least somewhat stacked in favor of a result which would be consistent with the disincentive hypothesis. Nevertheless, we found no sig-

(footnote continued from preceding page)

allowing the number of recipients to vary our composite variable implicitly takes this factor into account, at least in part.

[59] See, for example, A. C. Pigou. *The Economics of Welfare*, 4th edn. (London: Macmillan and Company, 1932), Part 4, Chapter 10. In a recent empirical study. C. T. Brehm and T. R. Saving ("The Demand for General Assistance Payments." *American Economic Review*, Vol. 54, December 1964, pp. 1002-1018) found that the fraction of the population in a state receiving general assistance payments between 1951 and 1959 was positively associated (in partial regression) with (1) average monthly benefits under these programs, (2) the ratio of insured unemployment to covered workers, and (3) the ratio of nonagricultural employment to population—a proxy for ease of entry onto welfare rolls.

[60] Naturally, it would have been better to use the same year for both variables, but this was impossible. Fortunately, general economic conditions were roughly the same in 1960 and 1962, and a ranking of SMSA's by per capita expenditures for welfare should have changed very little over this two-year period.

Excerpts from Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, Plaintiff's Exhibit "E".

nificant association whatsoever between public welfare expenditures per capita and $L_{M25-54.}$[61] If the availability of public welfare payments in an area has deferred prime-age males from participating in the labor force, it is not evident in these data.

---

[61] The simple correlation was +.05: the partial correlation was +.02; the *t*-value of the net regression coefficient was .06. The other variables included in the multiple regression are listed in Table 4-1.

Excerpts From Irelan, L. M., Ed., *Low Income Life Styles*, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

LOW-INCOME

LIFE STYLES

LOLA M. IRELAN, Editor

"Wealth maketh many friends, but the poor is separated from his neighbor."

Proverbs 19:4

This book is reproduced without revision in response to widespread interest in its contents. The Welfare Administration, sponsoring agency of the original publication, is now a part of the Social and Rehabilitation Service established by the Department of Health, Education, and Welfare in August 1967.

U. S. DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
Social and Rehabilitation Service
Office of Research and Demonstration

1967

Reprinted 1968, 1970, 1971

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

PREFACE

The recent spate of poverty-related research bids fair to produce useful, applicable information of a sort long needed in the welfare field. Enthusiasm for the advent of this knowledge is, however, muted by realization that some years must elapse before it is available. As frequently happens, research is accompanying action rather than preceding it.

Social changes now being attempted—such as the new health care provisions of the social security law, the extensive education legislation enacted in 1965, continuing attempts to implement fully laws benefiting our dependent population—cannot await results of latter-day research. In large part, they must rely upon background knowledge already on the shellf.

Considerable amounts of pertinent data do exist, though in relatively uncodified form. Behavioral scientists, pursuing other interests, have often produced new findings and insightful observations on the condition and effects of poverty. Certain categories of these findings have been collected and organized in the papers which follow.

Our central concern in writing them was to detail characteristic behavior of the poor in certain important life areas. Such information has obvious utility to people and agencies trying to improve the quality of life for any group of people. "Improvement" of any situation must be based upon understanding of it. We have tried, further, to show the causal links between economic deprivation and distinctive patterns of action. Such dynamic knowledge—insight into social processes as well as acquaintance with

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

their end-results—is a necessary tool in programs of social change.

Areas selected for attention were those which seem basic to the lifelong welfare of most people—family organization, children's preparation for school, health care, and economic behavior. As a backdrop for concentrated discussion of these segmented portions of life, the first chapter is a more diffuse survey of the lower-income outlook on life.

The total picture of poverty is not here—only a limited account of its results in a few of the more vital areas of living. Clearly, however, economic deprivation is a fundamental limitation which permeates all of life. The same foreshortened time orientation which hampers provision of medical service to the poor can be expected drastically to affect their working lives. The effects which social self-consciousness has on dealings with medical professionals and with sales clerks will be repeated in other contacts with middle-class society—extending, lamentably, even to dealings with welfare professionals. Psychological isolation, so noticeable within the lower-class family, reflects alientation which will show itself in political attitudes, and even in religious life.

Readers can extrapolate for themselves from the trends which are presented. They will also, if this picture of human processes is clear, reflect upon the social sources of some of their own attitudes and habits of action.

Of the papers presented here, four appeared originally as a series in *Welfare in Review,* the official monthly publication of the Welfare Administration. Chapter III ("Educational Training in Low-Income Families") is an

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

adaptation of Oliver Moles' "Training Children in Low-Income Families for School," also from *Welfare in Review*. Each represents the individual study by its author of the problem area and the relevant literature. Arthur Besner, Lola M. Irelan, and Oliver Moles are on the staff of the Division of Research of the Welfare Administration. Louise G. Richards is presently a research psychologist in the Consumer Survey Branch, Bureau of Education and Voluntary Compliance, Food and Drug Administration. She wrote "Consumer Practices of the Poor" while serving as a special consultant to the Division of Research, Welfare Administration. Thomas Gladwin, who wrote the introduction, is anthropologist who has devoted considerable and thoughtful effort to the application of social science to welfare-related problems.

Photographs in this publication are from the following sources: Black Star Photo Service (cover photo, by Burk Uzzle), George de Vincent (the photo facing pg. 1 appeared originally in the photo-essay by Stern and de Vincent, *The Shame of a Nation*); all other photographs are from the file of the U.S. Department of Health, Education, and Welfare.

LOLA M. IRELAN
Division of Research
Welfare Administration

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

FOREWORD

Our nation is really now for the first time admitting and facing squarely the existence of conditions within its borders which so incapacitate great numbers of its citizens that their life circumstances are nearly hopeless. This realization has come as a severe moral shock to many of us. We look back and wonder how we could have been so unaware.

I think the answer can honestly be that we did not realize what we were doing. It was not until the behavioral sciences had developed sufficient skill and insight to understand at least the broad interrelationships between social position, economic opportunity, self-expectation and social competence, to name a few key factors, that Americans and their leaders could understand that being poor is often a way of life into which people are locked from birth. From the Supreme Court school decision of 1954 onward to President Johnson's declaration of War on Poverty and his call to the Great Society, more and more public policy has rested upon the findings of behavioral scientists.

Although professional students of society deserve much credit for the research which has given direction to these great movements of social growth and reform, they can take little credit for having put their findings to work. Instead, a growing number of gifted popularizers, and even more gifted program administrators, have taken the social science research findings, combined them with their own often keen intuitions, and come up with new and more hopeful ways of looking at the problem.

Now we are in a new phase. Vast few programs have actually been authorized, and old programs in great num-

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

bers are being radically reoriented. The scientists now are being asked what to do about the problems they have brought to light, and at last they are showing themselves willing, more willing than ever before, to be their own spokesmen. This small volume of papers is an excellent and heartening example of that new trend.

It is heartening because one discovers in it how much we really do already know about the problems of poverty and avenues toward possible solutions. Equally it is heartening because social scientists have themselves undertaken the task, thus assuring maximum precision in the interpretation of data and findings.

This has, I am sure, not been an easy job. It has not been easy because of the great number and variety of studies which had to be brought together into a common frame of reference, and judged not only for validity but also for usefulness. It has not been easy, too, because as scientists the authors have necessarily been very aware of the limitations of their data and even more of the dangers of generalization. Yet they have had the wisdom to see that someone will generalize, and better it should be they than others less sophisticated in the interpretation of research data.

Doubtless some will be moved to criticize one conclusion or another. But many more will applaud and be grateful for a remarkably careful yet very fruitful synthesis of the current knowledge we have available to us as we march off to do war on poverty. Both the authors and the Welfare Administration are to be congratulated on a job which is creative and may well prove invaluable for planners of welfare programs.

THOMAS GLADWIN
Social Science Consultant
National Institute of Mental Health

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

LOLA M. IRELAN
and ARTHUR BESNER

LOW-INCOME OUTLOOK ON LIFE

Currently, in our national concern for the alleviation of poverty and economic dependency, the need to know and understand what life looks like from the bottom of society is a crucial one. We can induce meaningful change only if we understand the situation where we intend it to occur. It is unlikely, for example, that we can change or reduce rates of dependency and poverty without knowing what the conditions of dependence and deprivation mean to people caught up in them. Nor can we bring any class of people into a different relationship to society without knowing the quality of the existing situation.

As yet, knowledge of this sort is fugitive and tenuous. Much needed research has yet to be designed. There are gaps and flaws in the exploratory research which has been done. The findings on hand are suggestive rather than definitive. There is enough known, however, to warrant inventory and judicious application. It behooves us to systematize and use such knowledge as we do have. In the long run, such a step will serve to refine and increase it.

This paper summarizes available findings, largely from studies in the United States, bearing on the approach to life of the poor, the people at the bottom of society's economic ladder. It will discuss the connection between the

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

condition of poverty, the views of man and society which arise there, and the apparent effect of those views on the lower class version of American goals and values.

Life Conditions of the Poor

In our society, a continuously low income is directly associated with certain life situations. Poorer, more crowded living quarters, reduced access to education and recreation, occupational restriction to simpler, manual types of work—these and similar characterictics of the very poor are sufficiently obvious to need no underlining. The result of these circumstances is a set of life conditions which is not so obvious. They consist of four general limitations: (1) comparative simplification of the experience world, (2) powerlessness, (3) deprivation, and (4) insecurity. These limitations are, of course, relative. Indeed, they can be discerned only because of the different extent of their existence at the several levels of society.

1. Limited alternatives. The poor, of all the strata in society, have the slightest opportunity to experience varieties of social and cultural settings. Their own setting is one of the least intricacy and flexibility. Throughout life, they experience a very narrow range of situations and demands. Their repertoire of social roles is limited. They seldom participate in any activity which takes them out of the daily routine. They rarely play roles of leadership, or fill any position calling for specialized functioning. On their jobs they confront less complex situations and have fewer, less diverse standards to meet. Socially, they seldom go beyond the borders of kinship and neighborhood groups—people very like themselves.[1]

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

2. Helplessness. The position of the poor vis-a-vis society and its institution is one of impotence. They have practically no bargaining power in the working world. Unskilled and uneducated, they are the most easily replaced workers. The skills they do have are minimal, of little importance in productive processes. On the job itself, the very poor man can exercise little autonomy and has small opportunity to influence conditions of work. He is close to helpless even to acquire information and training which would change this situation. He has neither the knowledge nor the means to get it.

3. Deprivation. It is reasonable to suspect that this general condition, almost universally associated with poverty, is felt with particular intensity in American society. Deprivation is, after all, relative. When it is defined as lack of resources relative to felt wants and needs, it is evident that America has one of the greatest gaps between generally accepted goals and the extent to which the lower class can realistically expect to attain them. As a nation, we stress, perhaps inordinately, the value and virtue of high attainment. We expect and applaud efforts at self-improvement and upward social mobility. Commercial advertising attempts to stimulate and increase desire for status achievement. The richness of life in the rest of society is well displayed—on television, in newspapers, on billboards, in store windows, on the very streets themselves. All this, plus awareness that some people have actually succeeded in the strenuous upward move, makes the condition of the unachieving poor one of unremitting deprivation. Their relative deprivation is, perhaps, the condition which more than anything else affects the life-view of the

poor. Constant awareness of their own abject status and the "failure" which it rightly or wrongly implies understandably leads to embarrassed withdrawal and isolation.

4. Insecurity. People of low income are more at the mercy of life's unpredictability than are the more affluent. Sickness, injury, loss of work, legal problems—a range of hazardous possibilitie—may overwhelm anyone. But to the poor man they are especially fearful. His resources are more sparse. His savings, if any, are quickly expended in any sizable emergency. Certain conditions of his life makes emergencies more likely. His work skills are more expendable, sometimes more dependent on seasonal demands. He is more likely to lose his job on short notice. All emergency expenditure of funds may mean the postponing of rent payments and the fear of eviction. He is unable to secure for himself and his family the regular, preventive health measures which would fend off medical emergencies. He often finds that he cannot successfully navigate the channels involved in using public sources of emergency help, such as clinics and legal aid agencies.[2]

LOW-INCOME VIEW OF MAN AND SOCIETY

Constant, fruitless struggle with these conditions is likely to produce estrangement—from society, from other individuals, even from oneself. The wholeness of life which most of us experience—the conjunction of values, knowledge, and behavior which gives life unity and meaning—is less often felt by the poor. They see life rather as unpatterned and unpredictable, a congeries of events in which they have no part and over which they have no control.

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

Conceptualized as "alienation," this view of life is repeatedly found associated with lower social and economic status.[3] It is multifaceted—despair can be generated and felt in many ways. Generally, however, it seems to have four different forms of expression. The alienation of the poor is graphically seen in their feelings of: (1) powerlessness, (2) meaninglessness, (3) anomia, and (4) isolation.

1. Powerlessness. The objective condition of helplessness in relation to the larger social order leads naturally to the conviction that one cannot control it. The poor are widely convinced that individuals cannot influence the workings of society. Furthermore, they doubt the possibility of being able to influence their own lives. Correspondingly, they are likely to voice such pessimitic views as, "A body just can't take nothing for granted; you just have to live from day to day and hope the sun will shine tomorrow."[4]

2. Meaninglessness. Powerlesness, the feeling of being used for purposes not one's own, usually is accompanied by conviction of meaninglessness. The alien conditions in which an individual may be caught up tend to be unintelligible. He does not grasp the structure of the world in which he lives, cannot understand his place in it, and never knows what to expect from it. Oriented, by need, to the present, he is relatively insensitive to sequences in time. He often does not understand the continuity of past experience and current ones. And, not only does the poor man feel unable to control future events, he cannot even predict them.

3. Anomia. The term "anomie" was originally coined to describe situations in which social standards have been broken down, or have no influence upon behavior.[5] It has subsequently been pointed out that this normless condition is a probable result of the failure of prescribed behavior to lead one to expected goals.[6] The life view of individuals caught in such a discrepant situation is likely to be cynical, perhaps fatalistic. For example, the poor man who is taught in many ways that economic success is the most desirable thing in life—and then is barred from legitimate means of achieving it—may come to expect that illegal behavior is necessary to reach approved goals. The situation, moreover, induces people to believe in luck. The poor are in no position to comprehend the whole of society's structure and operation, or to understand its dysfunctions. Since they also have little control over it, its impact on them is frequently fortuitous. Understandably, they are quick to credit their difficulties to fortune and chance.[7]

4. Isolation. More than any other segment of society, the very lowest economic stratum is socially isolated. The poor man not only fails to comprehend society or his community, he is out of touch with it. He reads fewer newspapers, hears fewer news programs, joins fewer organizations, and knows less of the current life of either the community or the larger world than more prosperous, better educated people do. Nor do the poor associate among themselves more than minimally.[8] Experiencing separation from society and each other, it is natural for them to feel alone and detached. And feeling no identity, even with each other, they view the world as indifferent and distant

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

—"No one is going to care much what happens to you when you get right down to it.'"[9]

Goals and Values

What are the aims of life in such circumstances? In a situation of relative helplessness, knowing themselves worse off than the rest of society, living on the edge of chronic emergencies, and seeing their own circumstances as formless and unpredictable, how do the poor shape their lives? What values do they hold? What goals do they seek? Essentially, they seek and value the same things as other Americans. Naturally enough, since they are American poor, they absorb characteristic American values and preferences. And, just as naturally, the realities of low economic status are visible in the lower class version of American dreams and designs. The result is a constricted but recognizable variant of society-wide goals and standards.

Increased sophistication of research on lower income and deprived groups is correcting a long-held impression that the poor place no value on occupational and educational achievement. While the poor do have a more modest absolute standard of achievement than do those who are better off, they want relatively more improvement in their condition. They value the same material comforts and luxuries. Psychologically, they seek the securities that appeal to other Americans. They hold, with little qualification, to the same proprieties of social conduct.

Interest in improving one's status, however, seems to have different sources at different social levels. To the middle-class youth, the idea of having a better job than

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

his father is appealing, sometimes absorbing. Such achievement is attractive in itself. A lower-class youngster has more urgent, material reasons for wanting an improved future. His present is painfully unsatisfactory. His urge toward better, stabler occupations is not so much drive for achievement as flight discomfort and deprivation. It is probably stronger for that difference.[10]

Reality—expenses of education and training, lack of resources—usually keeps less well-off high school students from aspiring to the highest level professions. But, more than their middle-class fellows, lower class high school students want better jobs than their fathers'. They are more likely to value increased income. In significantly greater numbers, they are unwilling to enter the same occupations as their fathers.[11]

Although they may not expect to achieve it, most low-income people value advanced education. It has been found that up to 65 percent of parents will say they want a college education for their children.[12]

Materially, the lower classes are not satisfied with poor housing or living conditions. High on their list of desirable improvements are better housing and neighborhoods. Inside their homes, they value the same things as the general run of Americans—comfortable and durable furniture, a television set, an array of electrical appliances, and, to give life grace as well as comfort, a few ornaments and art objects. Tastes in style are definitely American—modern furniture, colored telephones, pole lamps, systematic color schemes.[13] It sometimes happens, as in more affluent circumstances, that materialistic values win out over real human needs. Parents stint on children's

Excerpts From Irelan, L. M., Ed., Low Income Life Styles, U.S. Department of Health, Education, and Welfare, Social and Rehabilitation, Service, Office of Research and Demonstration, Plaintiff's Exhibit "F".

clothing to save money for a car. Older children are pressed too early into adult responsibilities because both parents are working away from the home.[14] A woman postpones an operation for herself because the family must have a car or a radio.[15]

In common with other Americans, the lower class enjoys excitement and values the opportunity to escape routines and pressures of day-to-day existence. Spectator sports, television, visiting—all are valued leisure-time pursuits.[16]

Probably the most basic value held by the poor is that of security. Even more than "getting ahead," they value "getting by," avoiding the worsening of an already unstable situation.[17] They are unwilling to take risks, and seek security rather than advancement—also a frequent pattern in economically better-off segments of the population.[18]

The moral code of the very lowest class is a moot subject. It has been said that they have an entirely separate set of moral and ethical values. They have also been described as subscribing so fully to the general American code that they are frustrated by it.[19] The most realistic conception seems to be that which credits them with an adapted version of society's rules of behavior.

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

JULY
1970

TURNOVER AND JOB SATISFACTION

PERSONNEL

POLICIES

FORUM®

TURNOVER AND JOB SATISFACTION

CONTENTS

	Page
Introduction	1
Turnover	
Measurement of Turnover	2
Method of Measurement	2
Companies Making Separate Computation for Quits, Percentage of Discharges, and Layoffs	3
Comparison of Turnover Rates between Departments, Divisions, and Work Groups	3
Company Views on Turnover Rates for Particular Groups of Employees	4
Comparison of Present and Past Turnover Rates	5
Determining Causes of Turnover	5
Exit Interviews	5

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

Who Conducts Exit Interviews	6
Causes of Turnover	6
Company Views on the Relative Ranking of Turnover Causes	7
Control of Turnover	8
Programs Dealing with Turnover-Prevention	8
Ceneral Comments	10
Job Satisfiaction	
Measuring Job Satisfaction	11
Factors Contributing to Job Satisfaction	12
Relative Importance of Various Factors	13
Techniques for Improving Job Satisfaction	14
Types of Programs Used	14
Examples of Company Programs	15
Sample Company Forms on Turnover	16

INTRODUCTION

Turnover is a measure of the state of health of both the individual organization and the economy. From the viewpoint of the individual company, an extremely low turnover rate may indicate a static organization with too much deadwood, while a high turnover rate may be a sign of poor personnel practices and wasteful management of human resources.

This subject, and the related issue of employee job satisfaction, is dealt with in this survey, fifth in the 1969-70 *Personnel Policies Forum* series. It is based on data

obtained from the personnel executives participating in BNA's Personnel Policies *Forum*. The companies they represent are a cross section of American industry and are divided about 60 percent to 40 percent between larger companies (1,000 or more employees) and smaller companies.

A major finding of the survey is that most personnel executives regard the underlying causes of turnover and the major components of job satisfaction as being different for management personnel, office workers, and production workers. They also see substantial differences in the turnover rate for different categories of employees.

In ranking the causes of turnover, most of the personnel executives make a distinction between management and nonmanagement. For nonmanagement employees, the responses indicate, personal problems (family, transportation, poor health, etc.) head the list of causes, followed in descending order by dissatisfaction with (1) pay, (2) job opportunities, (3) supervision, and (4) working conditions. For management, however, personal problems drops to third on the list of causes of turnover; instead, dissatisfaction with pay and dissatisfaction with job opportunities are given as the two leading causes of management turnover by far.

Similarly, on the related issue of job satisfaction, the personnel executives have different views depending upon the type of worker involved. For production workers, the three most important factors for job satisfaction are seen as (1) pay, (2) job security, and (3) relations with supervisors. For the office worker, however, the three top factors are given as (1) relations with supervisors, (2) pay, and (3) the feeling that work is important. For management,

in contrast, the ranking is (1) feeling that work is important, (2) opportunity for advancement, and (3) pay.

Thus, pay as a job-happiness factor starts off as No. 1 for the production worker but falls to No. 2 position for the office worker and No. 3 for management. The feeling that work is important, on the other hand, isn't even among the top three factors contributing to the production workers' job satisfaction but is in third place for office workers and is the most important factor for management.

As might be expected from their views on the underlying causes of turnover and on job satisfaction factors, the personnel executives are of the opinion that different employee categories have different turnover rates. Thus, the *Forum* members indicate beliefs that (1) females have higher turnover rates than males; (2) office workers and sales personnel have below-average turnover while production workers have above average; (3) management personnel are below average in their turnover when contrasted with nonmanagement workers; and (4) the older half of the work force has below average turnover, while the younger half is above average.

In comparing "present" turnover rates with those of five years ago, most of the *Forum* members said their present rates were higher. But many of these companies indicated that their "present" rate was based on data available prior to the current economic slowdown. Several volunteered the observation that they expect their rate to mirror change in the economy—up in good times, down in bad.

Other findings include:

Exit interviews are conducted at 85 percent of the companies as a means of determining the causes of turnover.

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

Most of these companies assign the job of conducting the exit interview to the personnel department.

About half of the companies have adopted programs in recent years designed to control or reduce turnover. The most commonly used programs are (1) improved selection techniques, and (2) better orientation and related counseling. This would suggest that many companies regard their turnover problems as stemming from the time of hire.

Over half of the companies recently have undertaken programs designed specifically to improve employee job satisfaction. Supervisory training and management development courses are the most commonly used.

MEASUREMENT OF TURNOVER

Method of Measurement

Three quarters of the Personnel Policies *Forum* executives say they use a common formula in measuring employee turnover. This method involves taking the total number of separations (quits, discharges, layoffs, military separations, etc.) in a *month* and dividing by the total number of workers on the payroll in the pay period ending nearest the 15th of the same month, and then multiplying by 100 to yield a percentage separation rate.

Forty percent of Paneal members make separate computations for quits and discharges and a third do so for layoffs too. A few lump quits and discharges together, while one company calculates separations on the basis of whether they are voluntary or not. Another company figures full-time separations apart from part-time and also, separations in relation to accessions.

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

Here is a tabulation presentation of:

Percentage of Companies Making Separate Computations for Quits, Discharges, Layoffs, and Others

	Large	*Small*	*All*
Quits	42%	38%	40%
Discharqges	42	38	40
Layoffs	40	23	33
Others	22	10	17

Comparison of Turnover Rates Between Departments, Divisions, and Work Groups

More than half (55 percent) of the *Forum* companies make comparisons of turnover rates between departments, divisions, and work groups. One company notes the comparison of hourly vs. salaried groups, another solely between divisions and work groups, and a third between departments only.

Asked to rank different employee groups as to whether they had below average, average, or above average turnover, the *Forum* members indicated these views:

Female-Male. The *Forum* members are more inclined to believe that females have higher turnover rates than males. Forty-six percent of the *Forum* assert that females have above average turnover, while only 26 percent say that males do. Moreover, 35 percent credit males with below average turnover, while only 20 percent say that females have less than average turnover.

Production-Office-Sales. Over half of the personnel executives credit office workers and the sales force with be-

low average turnover. In contrast, only 12 percent would put production workers in this category. Similarly, production workers are tagged with above average turnover about three times as often as office workers and the sales force (52 percent for production workers contrasted with 17 percent for office workers and 19 percent for sales).

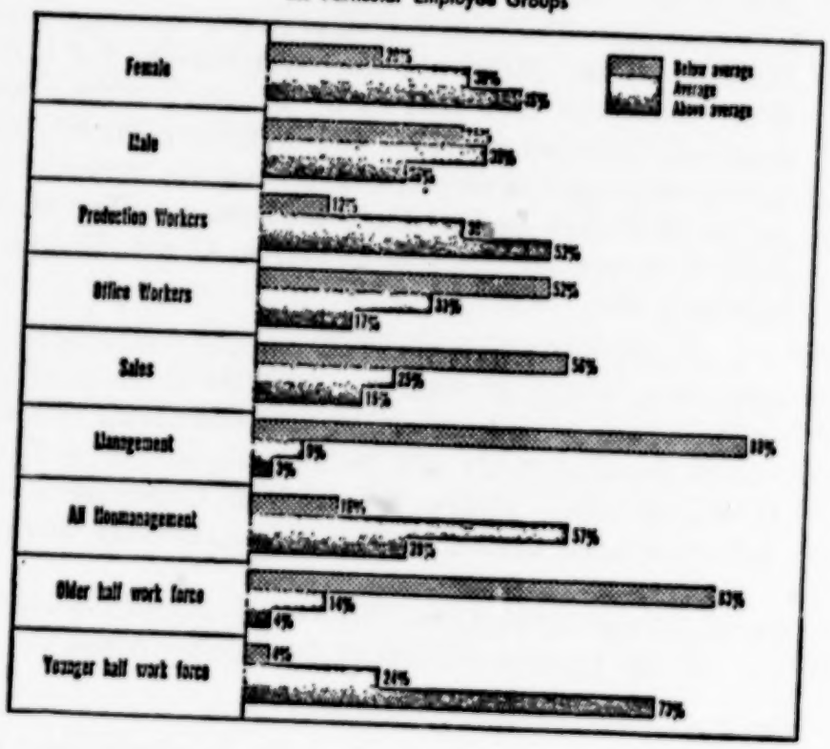
Management-Nonmanagement. The personnel executives overwhelmingly state that management personnel have below average turnover. Nearly nine out of 10 put management in this category, in contrast to the 16 percent who voice the opinion that nonmanagement employees have below average turnover.

Younger-Older. Not too suprisingly, the older worker is regarded by most personnel executives as being more stable and therefore having below average turnover. The older worker is rated below average in turnover by 83 percent of the *Forum,* while only four percent would put the younger worker in this category.

The bar graph that follows gives details on the personnel executives' rankings of the employee groups.

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

Company Views on Turnover Rates for Particular Employee Groups



A few of the panel members have these comments on female employees:

> Many of our turnover problems are uncontrollable due to the fact that 90 perscent of our employees are female. Pregnancies, marriage, moving, and family responsibilities are the main reasons for turnover. Also the fact that many of our positions are dead-end jobs and provide little or no opportunity for advancement has a strong bearing on the turnover of non-skilled and semi-skilled workers. —Harold T. Fill, Director of Personnel, Holy Cross Hospital, Chicago, Ill.

> Our work force consists of 75 percent female clerical employees, many of them having little or no previous work experience. In addition, our downtown location makes access difficult and parking expensive. —Peter G. Radzivickas, Policy Research & Communications Administrator, Michigan Blue Cross, Detroit, Mich.

Overall turnover rates for 1969 vary from 0.2 (Southern utility) to 150 percent (Midwest mail order house).

One personnel manager observes:

> For the past several years our turnover rate has averaged in the neighborhood of 11 percent annually which is very low when it is compared with the averages of industry. We feel that this low turnover rate is due to a large extent to our good employee communications policies. —James Malone, Personnel Manager, El Paso Natural Gas Co., El Paso, Texas.

Comparison of Present & Past Turnover Rates

Asked to compare their present turnover rate with the rate of a year ago, nearly half of the personnel executives replied that their rate today is about the same as it was a year ago; the remainder were about equally divided between those who think their present rate is higher than a year ago and those who think it is lower.

But when comparing their present rate with five years ago, a majority of the executives replied that their present rate is higher than it was five years ago. In comparing present and past turnover rates, most of the companies indicated that their "present" rate was based on data available prior to the current slowdown in business. Several companies noted that they expected their turnover rates to go up in good times when demands for labor are high and that, conversely, they expect their turnover rates to begin edging downward now that there is some slack in the economy.

Here is a rundown on the replies to the question on how the present turnover rate compares with the rate:

	Higher	*Same*	*Lower*
One year ago	27%	46%	29%
Five years ago	51	25	25

Determining Causes of Turnover

Exit Interviews

Exit interviews with employees may provide valuable insights into the causes for turnover. But there are limits

to the use of this technique. Employees may feel in some cases, that letters of recommendation might not be forthcoming if the real reason for leaving is given and they therefore may disguise the real reason.

In an effort to determine the causes of turnover in their own companies, 85 percent of Panel members report that they conduct exit interviews. In addition, one company mails a termination questionnaire to the departing employee.

Turnover and Job Satisfaction

At nearly eight out of 10 companies conducting exit interviews, the personnel department does the interviewing while at one out of 10 firms, the immediate supervisor and the personnel department hold the exit interviews. Others mentioned as interviewers include the department head, plant manager, factory superintendent, and president.

A table follows:

Who Conducts Exit Interviews

	Larger Cos.	*Smaller Cos.*	*All*
Personnel Department	72%	86%	78%
Immediate Supervisor & Personnel Department	15	6	11
Immediate Supervisor *or* Personnel Department	4	3	4
Immediate Supervisor	4	3	2
Others	6	3	4

Explaining his company's use of the exit interview, an industrial executive says:

The labor turnover in the office bargaining unit and shop bargaining unit is extremely low. The largest contributing factor to this is our high wage structure and full fringe benefit coverage. Since the turnover rate is so small, it has not become necessary to conduct former studies to ascertain the reason why employees separate. Exit interviews are the only method used to ascertain the reason for turnover.

In our management turnover, it has been determined that the greatest single contributing factor is an opportunity for immediate advancement with another company, both in position and compensation. This is generally true with the younger techincal employees. A more in depth exit interview is conducted with this type of employee. The conclusions from these interviews are discussed with higher management.—Robert L. Burgraff, V.P., Industrial Relations, Mack Trucks, Inc., Allentown, Pa.

Causes of Turnover

A written record of the exit-interview results is kept by nearly nine tenths of the Panel. These results are analyzed by more than three-quarters of the *Forum* to determine the most prevalent causes of turnover.

On the basis of exit interviews and other data or observations, Panel members ranked the most frequent causes of turnover for office and production workers and for management.

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

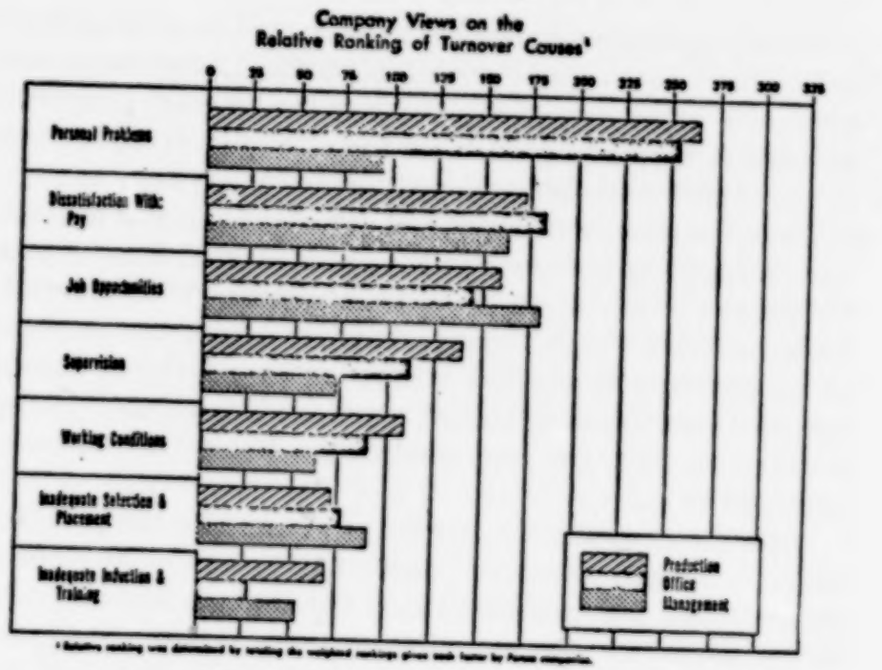
Their responses indicate that personal problems (family, transportation, poor health, etc.) head the list of causes of turnover among office workers and production workers, followed in descending order, by dissatisfaction with (1) pay, (2) job opportunities, (3) supervision, and (4) working conditions.

For management, however, the personnel executives rank personal problems as only third on the list of causes of turnover. The two leading causes of management turnover by far are dissatisfaction with pay and dissatisfaction with job opportunities, the responses indicate. Inadequate selection and placement procedures, which is ranked next to last as a cause of turnover among production and office workers, is given almost as much weight as personal problems as a cause for management turnover.

The following paragraph indicates the weighted ranking of causes of turnover for each of the three employee groups—production, office, and management.

Excerpts From Bureau of National Affairs, "Turnover and Job Satisfaction," Survey No. 91, July 1970, Plaintiff's Exhibit "G".

CAUSES OF TURNOVER 7



BEST COPY AVAILABLE

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

CHAPTER I. INTRODUCTION

Institutional mechanisms to improve the employment situation have not reached certain population subgroups. Despite the implementation of many manpower programs, persons in minority groups continue to be overrepresented in the ranks of the unemployed or in low-paying jobs.

The Department of Labor and other government agencies have tried programs such as the Concentrated Employment Program (CEP), Work Incentive Program (WIN), and the Neighborhood Youth Corps (NYC) to attack the problems of unemployment and low utilization by providing encouragement, education, training, work incentives, and job opportunities to the disadvantaged. Problems, however, continue to exist.

An adjunct of the direct effort to eliminate the problems of poverty and economic waste has been the attempt to obtain more information about the underlying causes of the problems as a means of improving existing programs or to implement new ones. One of the assumptions in this area of research is that attitudes toward work in low income groups are a contributing factor in their employment problems.

For a number of years the Department of Labor has been working toward improving the methods and reliability of gathering data about the understanding of the employment situation of people in poverty areas. An early effort was made in November 1966 when surveys were conducted in poverty areas of eight large cities. Unemployment rates were discovered that were three times higher than the national average at that time.[1] In 1967, the Bureau of Labor

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Statistics (BLS), with the financial support of the Manpower Administration (MA), conducted a series of experimental methodological surveys of employment problems among residents in poverty areas of New York, Boston, and New Haven. The surveys investigated areas such as the "undercount" of black men in household censuses and surveys; attitudes toward life and work; job-seeking methods used by residents in low income areas; nonparticipation in the labor force. Also of interest was the issue of interviewer-respondent communication, e.g., could certain substantive areas be explored and could questions be formulated for poverty populations that would provide usable and useful data. This issue was problematic since survey experience with this population had been limited.[2] Beginning in 1968 and continuing for 2 years, the program by the Department of Labor undertook large-scale substantive surveys in the poverty areas of six cities and the nonpoverty areas of two of the six. These surveys, applying the lessons of the experimental studies, produced findings regarding work-history; reasons for nonparticipation; job-seeking methods, and (as yet unanalyzed) attitudes about job and life satisfaction.[3]

The BLS, under the auspices of the MA, is continuing to explore a variety of approaches for understanding employment problems in poverty areas. Specifically, these include exploration of new concepts; new items to measure these concepts; new forms of questions; various kinds of interviews; different population subgroups; different kinds of sampling besides traditional household enumeration. These endeavors, as tested and evaluated, could be included in larger surveys that would produce findings which ultimately could shed light on continuing problems of poverty,

and, thereby, make possible programs to improve the employment opportunities for these individuals.

The research project that is being analyzed in this report is part of the Department's continuing effort to improve its information gathering capabilities.

Research Design and Summary of Findings

Reasons for Employment Problems. Manpower planners concerned with the disadvantaged have recognized that it is not sufficient merely to offer jobs to persons characterized by a term such as "hard-core unemployed." Some manpower programs are even designed to reach out to the nonworking population for job candidates. Once on the job, however, no guarantee exists that they will long remain there. One assumption about duration on the job is that it will be a consequence of the workers' perception and evaluation of it relative to other income-producing alternatives such as "hustling"—illicit or marginally legal economic activities. One hypothesis is that a variety of attitudes not related to a specific job will affect the "hard-core unemployed" attachment to the job. One such attitude is a general commitment to work, one tenet of the Puritan ethic.[4] According to an extreme view of this ethic, work is its own reward. It is expected to be unpleasant sometimes. Another set of attitudes has been mentioned as contributing to job success, as well as to performance in school and other areas of life. These attitudes are described as feelings of efficacy or of optimism with regard to one's ability to meet challenges successfully.[5] The idea is that people who have a sense of efficacy as a personality trait are likely to "make it" in the world. This theory is akin to the folk notion that "where there's a will, there's a way."

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Recently, some new ideas have surfaced, which, if true, would tend to explain the disaffection from work of many ghetto young men. These ideas follow from the notions of black culture,[6] or as an alternative explanation, the culture of poverty.[7] Here, the view is that the ghetto man has developed a life-style revolving around norms of autonomy and expressiveness which make repugnant that world of work as it now is. This world is considered "white, repressive and stifling" in regard to a style of speech, dress, and language.

The question is which are decisive for job attachment specifically. Which attitudes make a difference? In order to resolve these various theoretical approaches, one would have to examine them simultaneously in a large survey.

This study was a step in this direction. One objective was to examine the utility of items which would measure these different sets of attitudes. Insights were sought which would indicate whether certain question areas are worth further exploration and if the attitudinal concepts need more refinement.

The Research Project. The Bureau of Labor Statistics contracted with a local San Francisco organization, PACT, Incorporated, to conduct a series of personal interviews with black men in the San Francisco Bay area. The contents of the interviews were employment-related experiences, problems, and attitudes. The sample of respondents was selected from government and private manpower programs, and from nonparticipants in the labor force selected at random in the street or at other "causal" settings.

Field operations conducted by PACT, Incorporated were under the supervision of the BLS San Francisco Regional Office staff. Technical support was provided by BLS Washington staff.

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Sample Design. The samples included black men only, because of their population group having severe employment problems such as high unemployment rates or low-paying jobs. This selection controlled our study for two-variables—race and sex. The San Francisco Bay area was chosen as representative of a large metropolis on the West Coast that had many of the problems associated with low-income groups in urban areas and because it had a variety of manpower programs from which to draw the sample.

In order to examine the factors related to labor force performance for black men, the research design required three groups to represent performance types. Group one would include those who take a job and stay on it. Group two would include those who take a job but do not stay. Group three would include those who do not even want a job. (This last group serves as a comparison also, since they would be expected to show characteristics and attitudes different from the other two groups.) The determination of which respondents should be thought of as "stayers" or "leavers" would be made on the basis of the number of months on the job.

Since a household sample was economically prohibitive because of the large number of respondents who would have to be approached in order to select those reasonably fitting duration criteria, names and addresses were drawn from the records of Government manpower programs and establishments that ran Government-sponsored programs, which concentrated on the hiring of those formerly considered "unemployable" or the "hard-core unemployed." The use of records from the manpower programs and establishments participating in these programs as a source

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

for the interviews had the additional advantage of controlling the sample in terms of entry on the job; that is, the method and decision to take the job was similar for all respondents. Ultimately, household interviews from 186 men were processed for analysis in the first sample—men who took a job. This sample combines the "stayers" and "leavers."

The sample of men who got jobs through the government-sponsored manpower programs were randomly selected from 11 programs in the San Francisco Bay area.[8] Originally it was hoped that respondents could be selected on the basis of duration on the program job; that is, 50 percent of the respondents would have been those who had stayed on the program job 12 months or more and the other 50 percent would have been men who left before completing 4 or 5 months on the program job. However, the records, from which the names and addresses were taken, did not uniformly contain current or accurate information. In addition, because of difficulties encountered in finding respondents due to high mobility, poor addresses, etc., the duration criterion for selecting respondents was dropped. It was decided that the duration determination would be made during the subsequent analysis of the questionnaires.

The comparison sample of respondents—those who do not have a job and are not looking for one—were selected at random from men who agreed to be interviewed in a casual setting such as a street corner, pool room, or bar. Prospective respondents in these settings were screened to exclude labor force participants, those on leave or vacation from school or the military, and those unable to work because of a permanent disability. Interviews were completed by 185 men.

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Table 1. Percent Distribution of Program Sample by Interview Completion and Ages for Two Selected Sources

Sources	Total	18-22 years	23-30 years	31 years and over
Source A				
Designated respondents	100 (N=88)	59	33	8
Actually interviewed respondents	100 (N=19)	47	47	6
Source B				
Designated respondents	100 (N=223)	32	42	26
Actually interviewed respondents	100 (N=36)	42	33	25

Selected characteristics of the male respondents—age, marital status, educational attainment—can be seen in tables 1 through 5. Table 1 compares interviewed respondents with those in the original selected sample.

The casual sample, although not representative in a statistical sense, very readily furnished respondents who could be contrasted with the program participants. The casual respondents were not participants in the labor force. To get a similar sample in a household survey would have been very time-consuming. Further, because of the undercount problem, men interviewed in casual settings might not be found in households. In this sense, casual interviews have an advantage for students of employment problems of the "hard-core unemployed.'"

Subsequent tabulations indicated that, surprisingly, a high proportion of the casual sample consisted of men who had never worked (48 cases). This provided the

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Table 2. Percent Distribution of Type of Interview and Place of Birth

Place of birth	Household interviews	Casual interviews		
		Total	Sometime worked	Never worked
Number	186	185	137	48
Percent	100	100	100	100
San Francisco Bay Area	37	37	31	54
Other city in California	7	9	10	6
Deep South	33	25	28	19
Other South	15	17	20	10
Other States	6	10	11	6
Other Countries	1	1	...	2
Don't know	...	1	...	2
No answer	1	1	1	...

NOTE: Due to rounding, sums of individuals items may not equal totals.

opportunity to make further internal comparisons since this group represented even less labor force participation than the total causal sample (185 cases). Consequently, two subsamples were broken out—"casual, sometime worked" and "casual, never worked." With the program participants, the possibility arose of comparing three groups that fell along a continuum of labor force participation. Thus, relating attitudes to these groups would give some idea of the utility of the questions for understanding initial labor force entry.

The program participants also could be divided into two groups, in terms of duration on the program job. Another dimension of labor force performance beyond labor force participation could be considered. Also, we would be able to address the initial issue, the question posed by manpower planners concerning turnover of the "hard-core unemployed."

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Summary of Findings. A variety of attitudes were examined in relation to two measures of employment performance. The first measure is labor force participation; the second, duration on a job.

A number of background work attitudes, or predispositions, appeared to be related to participation or entry into the labor force, but these attitudes had little or no connection to the persons's duration on the job, once he had it. Once on the job, other attitudes, related to the immediate job, appeared to be associated with duration on that job.

Labor force participation, which is a minimal aspect of employment performance, was related to a variety of attitudinal items. A number of indicators of grievance, that is, discontent with work norms of bureaucracy and authority, were associated inversely with labor force participation in the survey. Similarly, a measure of perceived discrimination was related inversely to participaton. Other race-related items, for example, preference for black coworkers or supervisors, were related inversely to participation, and differentiated current participants from nonparticipants. But those who never had worked did not differ in their attitudes from those who, although currently out of the labor force, had at some time worked. Accordingly, the two race-related items were less useful than the others mentioned in explaining labor force participation.

Attitudes toward "hustling," a variety of illicit behaviors, also appeared to be related to participation. Awareness of hustling is less discriminating a measure than is preference for hustling, which was also related inversely to participation.

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

A number of "commitment to work" measures were found to be useful. These work values appeared to be related directly to labor force participation, although some specific indicators were less useful than others. Similarly, "drive to get ahead" was associated positively with participation. A nonwork attitude, the importance of "home and family" compared with other areas of life, was also related positively to participation.

Table 3. Percent Distribution of Type of Interview by Years of School Completed

Years of school completed	Household interview	Total	Casual interview: Sometime worked	Casual interview: Never worked
Number	186	185	137	48
Percent	100	100	100	100
8 years and under	4	3	3	2
9 years	5	7	7	8
10 years	9	13	9	25
11 years	23	17	17	17
12 years	47	45	47	37
13 years and over	11	14	16	8
No answer	1	1	1	2

NOTE: Due to rounding, sums of individual items may not equal totals.

Personal efficacy, as reflected in five items in the survey questionnaire, did not have the expected positive relation to labor force participation. This finding, which con-

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

Table 4. Percent Distribution of Type of interview by Marital Status

Marital status	Household interview	Total	Casual interview: Sometime worked	Casual interview: Never worked
Number	186	185	137	48
Percent	100	100	100	100
Married, with spouse present	38	16	20	6
Separated	8	14	16	4
Common law	...	8	9	6
Widowed or divorced	3	6	8	2
Never married	51	55	47	79
No answer	1	1	0	2

NOTE: Due to rounding, sums of individual items may not equal totals.

Table 5. Percent Distribution of Type of Interview by Age

Age	Household interview	Total	Casual interview: Sometime worked	Casual interview: Never worked
Number	186	185	137	48
Percent	100	100	100	100
17 years	1	1	1	...
18 years	4	...	...	...
19 years	11	6	3	15
20 years	14	10	4	25
21 years	13	11	10	15
22 years	6	11	10	15
23 years	5	10	11	8
24 years	5	9	9	8
25 years	6	4	6	...
26 years	3	5	6	2
27 years	4	3	4	2
28 years	5	5	7	...
29 years	4	4	5	...
30 years and over	17	21	24	10
No answer	1	...	...	...

NOTE: Due to rounding, sums of individual items may not equal totals.

Excerpts From "Work Attitudes of Disadvantaged Black Men," Report 401, U.S. Dept. of Labor, Bureau of Labor Statistics, 1972, Plaintiff's Exhibit "H".

tradicts some theoretical expectations as well as other empirical investigations, suggested the need for reconceptualization and further research.

When replicated with two duration groups, stayers and leavers, a relation could not be established clearly between duration on the program job and attitudes in the areas of grievances, discrimination, race preferences, "hustling," work commitment, and efficacy. Many of the attitudes toward these subjects show a strong relationship to labor force entry, that is, participation, but a weaker one to duration on a job.

What was related strongly to duration was a series of items measuring not general attitudes but perceptions and evaluations of the current job. If the job was viewed favorably, duration was more likely to be extended.

Finally, some demographic contexts, related to duration, are presented. Geographic region of origin appears to be related to duration; job stayers in the sample were more likely to be from the South than were leavers.

Excerpts From Leonard Goodwin, *Do the Poor Want to Work? A Social-Psychological Study of Work Orientations*, Plaintiff's Exhibit "I".

LEONARD GOODWIN

DO THE POOR WANT TO WORK?

A Social-Psychological Study

of Work Orientations

THE BROOKINGS INSTITUTION
Washington, D.C.

Foreword

How POOR PEOPLE, especially black recipients of public welfare, feel about work is an issue surrounded by much opinion and emotion but little research. Current proposals for meeting the needs of the welfare poor have brought to the surface conflicting views about their work orientations. Do the poor really want to work, or do they reject this form of activity, preferring welfare or other ways of getting money? Social scientists have given this topic little attention until recently, so there is no established body of literature.

Understanding the differences and the fundamental similarities in the work orientations of poor and more affluent groups is the central concern of this study. Leonard Goodwin, a research associate in the Brookings Governmental Studies program, has developed a framework for understanding and measuring work orientations and how they relate to the work activity of the poor. Extensive efforts were made to gather data from a broad spectrum

of poor and nonpoor people and to ensure the validity and reliability of responses. More than 4,000 persons were surveyed and the results checked for possible interviewer bias in responses. The traditional measures of statistical significance used in the text establish a basis for interpreting broad trends that appear in the data.

Mr. Goodwin argues that work orientations are both the influencers of current work activity and the results of past experiences. Differences between the work orientations of the poor and those of the nonpoor seem explainable by different environmental experiences. Living in poverty negatively affects a person's belief about his ability to achieve success, but does not appear to diminish life aspirations or the view that work contributes to self-respect.

An advisory committee composed of Edgar F. Borgatta of the University of Wisconsin, Elliot Liebow of the National Institute of Mental Health, and Lawrence Littig of Howard University made numerous helpful comments on the design of this study and on early versions of the manuscript. The comments of Gilbert Y. Steiner, Director of the Brookings Governmental Studies Program, of John Creager of the American Council on Education, and of several anonymous readers are also appreciated.

Reginald Monroe, Joseph Tu, and Helen Gordon Cook of the Social Science Computation Center at Brookings assisted in designing and using computer programs for analyzing the data in this study. Pauline Milius gathered follow-up data on former trainees in the Work Incentive Program from records in offices of the program. The study benefited greatly from the expert editing of Elizabeth H. Cross. The index was prepared by Lois Fern. Delores Burton patiently typed several versions of the manuscript.

The aid of the Manpower Administration of the U.S. Department of Labor in financing part of the research reported here is greatfully acknowledged. The Department of Labor, however, bears no responsibility for either the data or the views expressed. Nor do the author's views necessarily represent those of the trustees, officers, or other staff members of the Brookings Institution.

KERMIT GORDON
President

February 1972
Washington, D.C.

Do the Poor Want to Work?

To BE EFFECTIVE, welfare and manpower policies for the poor must be based on knowledge of how poor people view life and work. Evidence from this study unambiguously supports the following conclusion: poor people —males and females, blacks and whites, youths and adults —identify their self-esteem with work as strongly as do the nonpoor. They express as much willingness to take job training if unable to earn a living and to work even if they were to have an adequate income. They have, moreover, as high life aspirations as do the nonpoor and want the same things, among them a good education and a nice place ot live. This study reveals no differences between poor and nonpoor when it comes to life goals and wanting to work.

This conclusion may seem somewhat paradoxical. If poor persons, especially welfare recipients, really regard work as important for their self-esteem, why are they not

working and moving out of poverty? Why are welfare rolls increasing rather than decreasing?

The paradox would be easily explained if one could show that the poor covered in this study were merely giving responses they thought middle-class persons wished to hear, but the data as adjusted for respondent bias give little evidence of gross distortion. Instead, the implicit behavioral theory on which the paradox is based must be considered. It assumes a direct connection between the goal of self-respect through work and actual work activity. Such a theory may fail to explain events because it is too simple—goals and actions are not necessarily linked directly. Actions tend to be guided most strongly by orientations that emphasize beliefs and intentions.

Thus, for black women on welfare the orientation that is directly linked to work activity combines belief and intention elements and measures acceptability of welfare. Women who find welfare most acceptable tend to show the lowest work activity. By itself, this finding might suggest that poor women prefer welfare to work. The data also indicate, however, that ratings on this orientation are sensitive to encounters in the work world. Women in the Work Incentive Program (WIN) who were terminated from it without jobs—who experienced another failure in the work world—showed a marked increase in the acceptance of welfare score over their score when they entered WIN, demonstrating that the concrete experience of failure directly and negatively influenced this work orientation. The picture that emerges is one of black welfare women who want to work but who, because of continuing failure in the work world, tend to become more accepting of welfare and less inclined to try again. Given this insight, what should policy be on requiring welfare mothers to work?

Excerpts From Leonard Goodwin, Do the Poor Want to Work? A Social-Psychological Study of Work Orientations, Plaintiff's Exhibit "I".

Work Requirements for Welfare Mothers

Common arguments for proposing a work requirement are that work is psychologically valuable for welfare mothers and provides a model for their children. The data indicate that even long-term welfare mothers and their teen-age sons, though the sons have spent virtually their entire lives on welfare, continue to have a strong work ethic and do not need to be taught the importance of work. To encourage welfare mothers to enter the work force, it is necessary to present them with a chance to experience success in jobs that will support them. But realistically, what are the chances of training large numbers of welfare mothers so they can support their families above the poverty level?

Defendant Berman's Answers to the Interrogatories.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Defendant, Leonard Berman, for his answers to interrogatories propounded by plaintiffs and pursuant to the order of Judge Inzer B. Wyatt dated March 8, 1974 states:

1. (a) 683 (July 1 to December 31, 1971)

   (b) 2,129

   (c) 1,041

The foregoing figures include disqualification for receipt of public assistance for a number of different reasons and are not confined to disqualifications due to the operation, enforcement and application of Section 131 (10) of the Social Services Law and/or 18 NYCRR Sec. 385.7 (a) (1) but include disqualifications for the additional grounds specified in Sec. 385.7. The computer utilized by the Westchester County Department of Social Services is not programmed to differentiate between the several grounds for denial prescribed by Sec. 385.7.

2. The Department of Social Services of Westchester County maintains records of all applications for public assistance at 11 district offices at different locations in Westchester County. These records are in the custody of a supervisor of each district office.

2.1 Records of applications for public assistance are not compiled, coded and retained completely but such rec-

ords are compiled, coded and retained in part by means of electronic data processing in which a Univac Series 70/11 computer system is used. Programming for such computer is the responsibility of the programmer staff employed in the Division of Data Processing of the Office of the County Executive of Westchester County.

2.2 A computer output form is prepared for each application for public assistance and the reason for denial of assistance is coded thereon.

2.3 Code "L03" is used presently to identify and record denials of applications for public assistance where Social Services Law 131 (10) and 18 NYCRR Sec. 385.7 are applicable and is used also for recording and identifying denials of public assistance applications on various other grounds.

2.4 A "computer printout" could be prepared with the number and identity of persons disqualified from receiving Home Relief under Section 131 (10) of the Social Services Law and 18 NYCRR Sec. 385.7. However, such a "computer printout" could not be prepared to reflect any disqualifications prior to December 3, 1973 since before said date such denials were coded differently and are no longer available for identification by means of a "computer printout".

(Sworn to by Leonard Berman, Commissioner of the Westchester County Dept. of Social Services, April 22, 1974.)

Defendant Lavine's Notice of Motion for Judgment on the Pleadings or for Summary Judgment.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE, that the undersigned will move this Court, in Court Room of the United States Courthouse, Foley Square, New York, New York, on the 10th day of May, 1974 at 2:30 P.M., or as soon thereafter as counsel can be heard for an order pursuant to Rule 12(c) of the Federal Rules of Civil Procedure granting judgment in favor of defendants insofar as the complaint claims that Social Services Law § 131(10) is unconstitutional; or in the alternative for an order pursuant to Rule 56(b) of the Federal Rules of Civil Procedure for summary judgment insofar as the complaint claims that Social Services Law § 131(10) is unconstitutional.

Dated: New York, New York
April 26, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent Lavine

To: THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
Attention Gerald Norlander, Esq.

Defendant Lavine's Notice of Motion for Judgment on the Pleadings or for Summary Judgment.

Hon. Harry Lott
County Attorney
Attention Richard A. McAtamney, Esq.

Hon. George E. Boisvert
Commissioner of Social Services
for Ontario County
Attention Mr. Harrison Downe

Monroe County Legal Assistance Corp.
Flood Disaster Relief Project

Affidavit of Edward W. Maher, in Support of Motion for Order Determining Class Action and Summary Judgment.

UNITED STATES DISTRICT COURT

Southern District of New York

[SAME TITLE]

State of New York }
County of New York } ss.:

Edward W. Maher, being duly sworn, deposes and says:

I am the Executive Deputy Commissioner of Social Services of the State of New York and have the immediate responsibility for operations of the Department. I make this affidavit in support of defendant Lavine's motion to judgment on the pleadings or in the alternative for summary judgment and in opposition to plaintiff's application for a class action order.

I *Home Relief*

In this action plaintiffs attack a statute of the State of New York (Social Services L, § 131[10]) as in violation of their right to due process and equal protection of the laws. Plaintiffs Milne, Streeter, Lee and Beverly as well as applicants for intervention Levee, Westbrook and Bennett all were applicants for receipt of public assistance in the home relief (HR) category. Home relief is defined in Social Services Law § 158(a):

> "Any person unable to provide for himself, or who is unable to secure support from a legally responsible relative, who is not receiving needed assistance or care under other provisions of this Chapter, or from other sources, shall be eligible for home relief".

Other provisions referred to include Aid to the Aged, Blind and Disabled, and to Dependent Children, which programs are supported by the Federal government and to which the substantive provisions of the Social Security Act apply. But assistance to needy persons not included within the federal categories is provided only by State law and thus eligibility is defined solely in State Law. Only if the positive provision of assistance is so unfair as to arise to a question of Constitutional deprivation is there jurisdiction in this Court to enjoin its enforcement.

II *The Statute*

The provision under attack, section 131(10) of the Social Services Law, conditions eligibility for public assistance for persons who have recently voluntarily terminated employment:

"Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person".

If that termination is for the purpose of obtaining public assistance or an increased grant, the person is not eligible for receiving that public assistance for seventy-five days. Because the purpose behind a person's terminating his employment is always within his knowledge and frequently unknown to others, the statute creates a rebuttable presumption that if there is a voluntary termination of employment and an application for public assistance within seventy-five days, the purpose of that termination was to receive public assistance. However, the applicant can introduce evidence to show that that was not his purpose.

The intent of the legislature in enacting the provision is plain—to deter persons from leaving employment without being able to sustain themselves for a reasonable period of time on the assumption that they would receive public money. As the Governor stated in approving the bill (L. 1971, Ch. 946):

"The bill is designed to provide increased opportunities for gainful employment to persons who are presently dependent upon the welfare system and to deter gainfully employed persons from leaving their jobs in order to obtain public assistance, as I recommended to the Legislature in my Special Message on Welfare and Work.

State employment offices will be required to establish special programs for unskilled workers and public assistance recipients. These programs will include the development and maintenance of job registers and specialized preparation and counseling to develop productive members of the work force". ("McKinney's Session Laws of New York 194th Session, Laws of the Regular Session, 1971", Vol. 2, pp. 2636-7).

The legislature found that the availability of public assistance could be a disincentive to work and self-suffi-

ciency. This statute is precisely designed to counteract that situation, because it does not affect the eligibility of persons who terminated their employment without regard to the availability of public assistance. A further positive effect of the measure is to confine the finite legislative appropriation for relieving poverty to use for persons unable to provide for themselves. If persons who are employed are encouraged to leave their jobs and are also eligible for public assistance, the amounts received by everyone would diminish.

In furtherance of the statute, the Commissioner issued a regulation (18 NYCRR § 385.7):

"Sanctions (a) a person who:

(1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof; or

(2) without good cause fails or refuses to undergo a necessary medical examination or treatment; or

(3) is required under this Part to receive manpower services and certification and without good cause fails or refuses to accept manpower services and certification; or

(4) is required under this Part to pick up his check semi-monthly at the State Employment Service and without good cause fails or refuses to do so; or

(5) without good cause fails or refuses to accept referral to and participate in a vocational rehabilitation program, shall be disqualified from receiving assistance for 30 days thereafter and until such time as he is willing to comply with the requirements of this Part, except that an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

Another regulation 18 NYCRR § 385.6(c) in used as a guideline (See Informational Letter appended hereto as Exhibit "A") to provide instances where there was a valid reason to terminate employment, although it refers to acceptance of employment:

(b) Any person who applies for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such or larger amount thereof in the absence of evidence to the contrary supplied by such person.

(c) In the event a person is subject at the same time to the requirements of this Part and the requirements of the WIN program, the requirements of the WIN program shall take priority, and where a sanction is required to be imposed against a person under this Part and the WIN requirements, the WIN sanction shall be imposed."

"(c) A person shall be deemed not to have refused without good cause to accept employment if evidence shows that:

(1) the job offer was not bona fide;

(2) the salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation or hours or conditions of work offered are sub-

stantially less favorable to the applicant or recipient than those prevailing for similar work in locality;

(3) a strike, lock-out or other industrial controversy was in progress at the place in which employment was offered;

(4) the acceptance of such employment would either require the applicant or recipient to join a company union or resign from or refrain from joining any bona fide labor organization;

(5) the job would have been hazardous to the applicant's or recipient's life or health, or there was an absence, if appropriate, of workmen's compensation;

(6) the place of employment was an unreasonable distance from the applicant's or recipient's home;

(7) transportation by public carrier or by private means between the applicant's or recipent's home and the place of employment was unavailable;

(8) child care plans were temporarily disrupted making it impossible for the applicant/recipient to report as required; or

(9) temporary and verified illness incapacitated the client".

In addition Social Services Districts may issue directives. In New York City, for instance, the Human Resources Administration issued a directive IM #14/72 on January 27, 1972 specifying the procedures for enforcing § 131(10). Appended hereto as Exhibit "B" is a copy of the relevant portions (¶ 2) of that directive.

Although public assistance is intended to meet basic needs of persons unable to support themselves, some employable persons may tend to voluntarily terminate their employment, intending to support themselves by public assistance. The purpose of this statute is to counteract that tendency and it is the least restrictive method of doing so, since if affects only the persons who are motivated to terminate their employment by the expectation of receiving benefits. In so doing it also tends to preserve public funds for persons unable to support themselves. A further derivative of this bill is to support the public policy enunciated in the Labor Law for unemployment insurance, e.g. Labor Law §§ 501, 593. Persons who voluntarily terminate their employment without good cause are not eligible for unemployment insurance. *Id.* The statute reflects a policy that persons are responsible to support themselves wherever possible. If such persons automatically were eligible for public assistance, the Social Services Law would undermine the Labor Law. By creating a period of seventy-five days of ineligibility for persons who voluntarily terminate employment without good cause for the purpose of receiving public assistance, the deterrent effect of the Unemployment Insurance Law is not diluted.

III *Plaintiffs*

The determination whether section 131(10) applies to a given applicant for public assistance always involves an evaluation of the facts of the particular case, both as to whether the termination was voluntary and whether the purpose was to obtain public assistance. Neither the local district nor the State Department can void an examination of the individual facts behind each application. Nor could this Court determine eligibility of each plaintiff or member of a plaintiff class unless it examined the specific evidence in each case.

A. *Ronald Milne*

The original plaintiff in this case, Ronald Milne, claimed that he did not voluntarily terminate his employment but was forced to resign as a security guard at Columbia University. He claimed to have been denied assistance under Social Services Law § 131(10); but on information and belief, defendant Berman reconsidered his decision and determined Milne to be eligible. Thus his complaint is moot; but it is an illustration that the statute requires a factual determination in each case based on its circumstances.

B. *Robert C. Lee*

Intervention on the part of Robert C. Lee was ordered by Judge Wyatt on March 27, 1974. Lee's employment as a machinist was terminated "'due to a combination of excessive excused and unexcused lateness and absenteeism which proved discriminative to . . . [the] production schedule'" (Compl't ¶ 16). Apparently the local agency found that he deliberately provoked his discharge to obtain public assistance. This department has not been presented with the case yet because the hearing was adjourned upon a misunderstanding on the part of the local agency that Lee's status as a plaintiff in this proceeding prevented this Department from holding a hearing on eligibility. The hearing is presently scheduled for April 26, 1974. No harm can come to Lee since he has been receiving assistance. It should be noted that defendant Lavine has not applied Social Services Law § 131(10) to plaintiff Lee.

C. *Douglas Streeter*

Leave to intervene as a plaintiff was also granted to Streeter on March 27, 1974. Streeter's employment in a nursing home was terminated after he claimed to be sick

over the New Year holiday. He had previously sought public assistance after leaving a job (Streeter's complaint, ¶ 15). The local agency found that he was ineligible for home relief. Streeter requested a fair hearing on January 28, 1974. A month's adjournment was granted to the local agency because of the pendency of this proceeding as with Lee, *supra* and on assurance that Streeter was actually receiving assistance. A hearing was held on March 20, 1974 and on April 4, 1974, the decision reversing the local agency was rendered (Exhibit "C" appended hereto). Streeter was found eligible for assistance. Thus there is no justiciable controversy between defendant Lavine and plaintiff Streeter.

D. *The Brothers Beverly*

Four brothers, Joe, Odell, John and Willie Beverly were granted leave to intervene as plaintiffs on the complaint that Social Services Law § 131(10) had been unconstitutionally applied to them by the Ontario County Social Services Department, making them ineligible for public assistance. Actually only Joe Beverly ever applied for public assistance (Exhibit "E", pp. 15-16, *supra*). The complaint of the other three must be dismissed because they have no cause of action against any defendant. Furthermore only Joseph worked regularly (Exhibit "E", p. 9). It also should be noted that no complaint for the Beverly brothers has yet been filed. Joseph terminated his employment with a produce company, claiming that after eviction from one place, he had no other place to live. Assistance had been denied on January 29, 1974. No request for a fair hearing was received until February 26, 1974. A hearing was held on March 14, 1974 and a decision denying assistance was rendered on March 28, 1974. Contrary to plaintiffs' allegations, the Commissioner found that Joseph Beverly had a place to live and had terminated

his employment for the purpose of obtaining public assistance. That decision is appended hereto as Exhibit "D" and the transcript of the hearing is submitted herewith as a separate Exhibit "E". The facts in this case are not similar to those on which claims for eligibility on the part of the other plaintiffs is found. Each case must be determined on its own facts. No ruling on eligibility can be made in the abstract.

E. *Applicants for Intervention*

There have been three other applicants for intervention whose motions have been denied. Roy Levee, an applicant in New York City claimed that he did not voluntarily terminate employment, but that unexcused absences were the result of his wife's illness. The Department of Human Resources reconsidered its decision denying assistance and found Levee eligible. Thus his complaint was moot. Ulysses Westbrook claimed to have been suspended from his job when he was arrested on a criminal charge. The Monroe County Department of Social Services reversed its decision finding Westbrook ineligible under Social Services L., § 131(10) and found him eligible, rendering his complaint moot. Ocie Bennett also sought to intervene in this proceeding. He claimed that he did not voluntarily terminate employment. The Orleans County Department of Social Services allegedly denied assistance based on Social Services Law § 131(10). Upon information and belief, the local agency had evidence that the termination was voluntary and for the purpose of receiving assistance. Also upon information and belief Bennett is now receiving food stamps.

Most of the plaintiffs and putative plaintiffs contend that they did not voluntarily terminate employment. It is not principally the application of the presumption that is involved in such complaints. It is also clear that the determinations are based on evidence, not on presumption or legal conclusions—determinations which vary from evaluating housing for agricultural workers (Beverly) to the affect of an arrest on employment as a Correction Officer (Westbrook). There are no common questions of fact and each case is individual, not typical of any large class of persons.

WHEREFORE, defendant Lavine respectfully requests that the complaint be dismissed to the extent that it attacks as invalid Social Services Law § 131(10), or in the alternative that summary judgment to that extent be granted to defendant and that a class action order be denied.

(Sworn to by Edward W. Maher, April 29, 1974.)

Informational Letter to All Commissioners, Exhibit "A" to Maher Affidavit.

DEPARTMENT OF SOCIAL SERVICES
1450 Western Avenue
Albany, New York 12203

ABE LAVINE
COMMISSIONER

INFORMATIONAL LETTER

Transmittal No.: 74 Inj-19

Date:

To: All Commissioners

SUBJECT: Guidelines Useful for Ascertaining Whether the Termination of Employment is for the Purpose of Qualifying for Public Assistance

SUGGESTED DISTRIBUTION: All Professional Staff

It has been brought to the attention of this Department that local districts may be having problems determining whether an applicant or recipient terminated employment with the intent of qualifying for public assistance so as to be liable for the sanctions found in Social Services Law 131 (10) and Departmental Regulation 385.7(b).

Until such time as a Regulation is filed setting forth the standards to be used under such sections, districts are advised to refer to Departmental Regulation 385.6(c) (Determination of refusal to accept manpower services and certification). Although that section concerns refusal to accept employment, the examples contained therein are useful as guidelines in ascertaining whether the termination of employment was for the purpose of qualifying for public assistance.

Informal Letter to All Commissioners, Exhibit "A" to Maher Affidavit.

Local districts, of course, should not consider this list as exhausting the possibilities under which a voluntary or provoked discharge is not subject to sanction, but should continue to exercise reasonable discretion, considering such factors as the lapse of time between termination of employment and application for assistance, attempt to resolve the differences with the employer which led to termination, ability to verify reasons alleged for termination, etc.

THOMAS H. KIHOYNE
Deputy Commissioner

Filing Reference

SSL 131 (10)	Department Regulations 385.7 (b) 385.6 (c)

Excerpt From Directive 1M No. 14/72 Issued by the Human Resources Administration on January 27, 1972, Exhibit "B" to Maher Affidavit.

EMPLOYMENT—

#14/72
January 27, 1972

To: Center Directors/Office Managers
Employment Section

From: Hilda Hollyer, Director
Bureau of Public Assitance

Subject: Employment Program

1. Failure to Cooperate
2. Voluntary Termination of Employment or Reduction of Earning Capacity
3. Valid Employment Refusals
4. Budgeting Cases in which Employable Member Refuses to Cooperate
5. Support Proceedings on Failure to Cooperate

Pending revision of Procedure 70-24, Employment Program, the following is effective immediately:

1. *Failure to Cooperate*

If an applicant or recipient fails to cooperate, without good cause, in any phase of the Employment Program, such as failure or refusal to undergo a necessary medical treatment, failure or refusal to accept referral to and participate in a vocational rehabilitation or training program, including the Work Incentive Program, refusal to accept referral to and work in employment, including work relief,

etc. and his case has been closed in accordance with procedure (including the right to review (his case cannot be reopened for at least thirty (30) days and until such times as he is willing to cooperate in the Employment Program. If after 30 days such a client reapplies and refuses to cooperate in any phase of the Employment Program he may not be accepted for public assistance.

2. *Voluntary Termination of Employment or Reduction of Earning Capacity*

State regulations require that an applicant for or recipient of public assistance who voluntarily terminated employment or reduced his earning capacity, shall be ineligible for assistance for 75 days thereafter if a home relief applicant or recipient, and for 30 days if an ADC applicant or recipient. This regulation is based on the assumption that these applicants or recipients have quit their jobs specifically for the purpose of qualifying for such assistance or larger amount thereof. There are, however, valid reasons for terminating employment, and those applicants or recipients with valid reasons who are otherwise eligible for public assistance will be eligible immediately. Valid reasons for terminating employment include the following:

a. Harassment by employer or employee's supervisor;

b. Discrimination because of race, sex, age or religion;

c. Expectation of another job that did not materialize;

Excerpt From Directive 1M No. 14/72 Issued by the Human Resources Administration on January 27, 1972, Exhibit "B" to Maher Affidavit.

d. Conditions on the job or on the way to the job that posed a danger or hazard to the employee;

e. Family moved to a location which made the job an unreasonable distance way;

f. Child care plans were disrupted;

g. Verified illness forced resignation;

h. Strike or industrial controversy caused resignation.

The Employment Specialist shall refer such cases to the Employment Unit Supervisor for acceptance or rejection.

If an applicant or recipient who has quit the job for a reason other than these, and is disqualified under the 75 day regulation, starts to work again and then loses his job, he shall be considered eligible immediately, if otherwise eligible for public assistance.

If the applicant or recipient who is told he is ineligible for 75 days returns to his former job, and then leaves it for a valid reason or is terminated by the employer, he shall be considered eligible immediately if otherwise eligible for public assistance.

3. *Valid Refusal to Accept Employment*

Failure to accept employment is not considered willful refusal if evidence shows that:

a. The job was not a bonafide offer.

Decision After Fair Hearing in the Matter of the Appeal of Douglas Streeter, Exhibit "C" to Maher Affidavit.

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

DOUGLAS STREETER

from a determination by the Westchester County Department of Social Services (hereinafter called the agency.

DECISION AFTER FAIR HEARING

A fair hearing was held at White Plains, New York, on March 20, 1974, before Thomas J. Mahoney, Hearing Officer, at which the appellant, the appellant's representative, and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for home relief. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant applied for home relief on January 13, 1974 and is currently in receipt of assistance pursuant to a Federal Court order. On January 16, 1974, the agency determined to deny appellant's assistance because he terminated his employment for the purpose of qualifying for public assistance.

(2) On January 2, 1974, the appellant was terminated from his employment because he failed to report for work on December 31, 1973. However, he did provide a valid reason for failing to report for work. Appellant was ill and so notified his employer.

Decision After Fair Hearing in the Matter of the Appeal of Douglas Streeter, Exhibit "C" to Maher Affidavit.

Section 385.7(b) of the Regulations of the State Department of Social Services provides that a person who, without good cause, refuses to work in employment, including work relief, in which he is able to engage shall be disqualified from receiving assistance for a period of seventy-five days and until he complies with the requirements relating to employables. This section of the Regulations also provides that a person who applies for public assistance within seventy-five days after voluntarily terminating his employment shall be deemed to have done so for the purpose of qualifying for public assistance in the absence of evidence to the contrary supplied by such person.

The credible evidence establishes that appellant failed to report for work on December 31, 1973 because he was ill. The evidence further establishes that appellant was surplus labor for the job that he was performing and that that was the reason for his employment being terminated. Accordingly, the agency erred in denying public assistance to appellant. The agency is directed to continue providing public assistance to appellant subject to verified need.

DECISION: The determination of the agency is not and cannot be affirmed. The agency is directed to take appropriate action in accordance with the foregoing decision pursuant to the provisions of Section 358.22 of the Regulations of the State Department of Social Services.

DATED: Albany, New York, Apr 4, 1974.

ABE LAVINE
Abe Lavine
COMMISSIONER

By CARMEN SHANG
Carmen Shang
ASSISTANT COMMISSIONER

Decision After Fair Hearing, in the Matter of the Appeal of Joseph Beverly, Exhibit "D" to Maher Affidavit.

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

JOSEPH BEVERLY

from a determination by the Ontario County Department of Social Services (hereinafter called the agency)

A fair hearing was held at Canandaigua, New York on March 14, 1974, before William Gorton, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for home relief. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) The appellant was employed by the Emerson Produce Company in Rushville, New York.

(2) The appellant was evicted from his residence in Rushville, and contended that he voluntarily terminated his employment due to lack of housing.

(3) An officer of Emerson Produce Company testified that there was a house trailer available to rent, and further further testified that the appellant could return to his employment where he was receiving two dollars per hour for a 40 hour work week, and in addition the employer agreed to advance the appellant, and his three brothers he was

Decision After Fair Hearing, in the Matter of the Appeal of Joseph Beverly, Exhibit "D" to Maher Affidavit.

living with, the first two months rent on the aforementioned trailer.

(4) The appellant terminated his employment and moved into Ontario County, and applied for home relief.

(5) The agency denied the appellant's application on January 29, 1974, and the appellant requested a fair hearing to review the agency's determination.

Section 131 (10) of the Social Services Law provides that where a person voluntarily terminates his employment for the purpose of qualifying for home relief he is disqualified from receiving home relief for a period of 75 days, and further provides that where a person terminates his employment, it shall be deemed a termination for the purpose of qualifying for home relief, in the absence of evidence to the contrary. Clearly in this case the appellant attempted to show that he terminated his employment for another reason namely the lack of adequate housing. The record establishes that there was adequate housing and that it was readily available to the appellant, and the agency properly denied his application for home relief.

DECISION: The determination of the agency is affirmed.

DATED: Albany, New York, Mar 28 1974.

ABE LAVINE
Abe Lavine
COMMISSIONER

By CARMEN SHANG
Carmen Shang
ASSISTANT COMMISSIONER

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit.

STATE OF NEW YORK
Department of Social Services

In the Matter of the Appeal of

JOSEPH BEVERLY

From a Determination by the Ontario County Department of Social Services relating to a grant of public assistance

---

Date of Hearing: March 14, 1974

Place of Hearing, Canadaigua, New York

Before: William Gorton, Hearing Officer.

Reported by: Tape Recorder

APPEARANCES:

Appellants:

Joseph Beverly	Appellant
John Beverly	Witness
Douglas Berky	Appellant's Representative

Ontario County Department of Social Services:

Judith Bacon	Fair Hearing Representative
Harrison Downs, Esq.	County Attorney
Kathleen Dillinbeck	Fair Hearing Representative

The Hearing Officer: This fair hearing was requested by Joseph Beverly, who is appealing a determination by the Ontario County Department of Social Services; denying his application for public assistance. It is my understanding that the agency determined to deny the appellant's assistance due to his voluntary termination of his employment, is that the issue as you understand it, Mrs. Bacon?

Mrs. Bacon: Yes, it is.

The Hearing Officer: Is that the issue as you understand it, Mr. Berky?

Mr. Berky: Yes.

The Hearing Officer: The hearing will be conducted in the following manner: Each side will present its case through the testimony of witnesses and through the introduction of documents. Each side will have an opportunity to question the witnesses for the other side. Upon completion of the hearing, the record will be sent to Albany where the Commissioner of the State Department of Social Services will render his decision.

My name is William Gorton and I have been designated by the Commissioner of the New York State Department of Social Services to conduct this hearing. Are you ready to proceed, Mrs. Bacon? Mrs. Bacon, I show you Agency's Exhibit I consisting of nine pages and ask you if these are documents kept by the agency in the regular course of business?

Mrs. Bacon: Yes, they are.

The Hearing Officer: Do you wish to offer them in evidence, at this time?

Mrs. Bacon: Yes, we do.

The Hearing Officer: Do you have any objections to the receipt in evidence of Agency's Exhibit I, Mr. Berky?

Mr. Berky: No.

The Hearing Officer: Agency's Exhibit I is received. Mrs. Bacon, do you wish to adopt, as your testimony, the Fair Hearing Summary in this case?

Mrs. Bacon: Except for the correction—I talked to Mr. Sandy Emerson; I had down a Mr. Gerald Nelson. For some reason— How that got in there, I don't know.

The Hearing Officer: All right.

Mrs. Dillinbeck: A typographical error.

The Hearing Officer: All right. Do you wish to offer any testimony, in this case?

Mrs. Bacon: No. I don't think so.

The Hearing Officer: Well, don't you have a witness here, miss?

Mrs. Bacon: Yes, we do. This is—

The Hearing Officer: Well, do you wish me to question the witness, would it be helpful?

Mrs. Bacon: This is Mr. Ervin Vanapps (phonetic spelling) and he is employed with the Emerson Produce Company of which he is very—

The Hearing Officer: Well, let me ask you—do you want me to question this gentleman?

Mrs. Bacon: Yes. Okay.

The Hearing Officer: Will you state your name for the record, sir?

Mr. Vanapps: Ervin Vanapps (phonetic spelling).

The Hearing Officer: And where are you employed, sir?

Mr. Vanapps: Emerson Produce Company.

The Hearing Officer: And what is your capacity with Emerson Produce Company?

Mr. Vanapps: Well, I have been there for 35, 38 years?

The Hearing Officer: Are you a foreman?

Mr. Vanapps: Vice-president.

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit.

The Hearing Officer: Vice-president?

Mr. Vanapps: Yes.

The Hearing Officer: And did you employ the appellant, Joseph Beverly?

Mr. Vanapps: Well, I don't know that I employed him or not.

The Hearing Officer: Well, did Emerson Produce?

Mr. Vanapps: Emerson Produce, yes.

The Hearing Officer: All right, and did your company—when did they employ him, to the best of your recollection?

Mr. Vanapps: Yes. Joe has worked for us off and on for quite a while. For me to come right out and tell you exactly, I don't know. He worked all last summer.

The Hearing Officer: Yes.

Mr. Vanapps: Partly from last spring right on through. Yes, he worked for us quite a long time.

The Hearing Officer: Can you tell me, did there come a time that he terminated his employment?

Mr. Vanapps: No, we did not terminate his employment.

The Hearing Officer: No, I say did he terminate his employment?

Mr. Vanapps: Yes. He sort of terminated his employment.

The Hearing Officer: Can you tell me what the reasons for the termination of employment were?

Mr. Vanapps: As near as I know, the boy didn't have a place to stay. That is the reason that he terminated his employment. He had to move a lot from one place to another, and he had to keep moving around; and we kept picking him up at different places. Then, I lost track of him. He moved out to Canandaigua, and I lost track of him it seems like for about three and a half weeks that I didn't know where he was.

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit.

The Hearing Officer: Well, I see. Can you tell me, when did he last receive wages from your organization?

Mr. Vanapps: I think we have the record there. I don't know if it was January 29th or so—

Mrs. Bacon: The 25th.

Mr. Vanapps: The 25th of January.

The Hearing Officer: Yes.

Mr. Vanapps: The last time.

The Hearing Officer: Does your organization—

Mr. Vanapps: Get paid every week, anyway, all the help does.

The Hearing Officer: Does Emerson Produce provide any housing?

Mr. Vanapps: No, we don't.

The Hearing Officer: I see. Where is your business located, sir?

Mr. Vanapps: Middlesex, New York.

The Hearing Officer: Are you familiar with the housing or the availability of housing in Middlesex, New York?

Mr. Vanapps: I'm not too much familiar with it. Sometimes, I guess, they had a trailer that was available for the boys at one time. After the call this morning, I did check; and that trailer has been rented now.

The Hearing Officer: Well, other than this trailer, are there other—

Mr. Vanapps: Well, I hadn't looked into it, myself.

The Hearing Officer: Yes.

Mr. Vanapps: You know. Nobody inquired. They called me yesterday about it, and I said, we do form on the trailer and rent. When they called this morning to come out to the hearing; I said, "well, I better find out about the trailer." I called the people—my golly, they rented the trailer.

The Hearing Officer: Was the trailer available at the time the appellant's terminated their employment?

Mr. Vanapps: Yes, it was available then.

The Hearing Officer: What was the rent on it, if you know?

Mr. Vanapps: I don't know, I wasn't involved; and I think Joe can tell you better than I can.

The Hearing Officer: Okay, where had he been living in Middlesex, when he was working for you?

Mr. Vanapps: He lived in Potter (phonetic spelling).

The Hearing Officer: Potter?

Mr. Vanapps: Yes. Then he finally lived with his sister in Rushville, Scotts apartment, you know, not too far—three and a half miles.

The Hearing Officer: Okay.

Mr. Vanapps: Yes, that is where he lived most of the time. I guess, he lived in Gorum (phonetic spelling) a few—about a week or so. That's where I lost track of Joe after that. I didn't know where—

The Hearing Officer: All right. Do you have any questions of the last witness?

Mr. Downs: Mr. Vanapps, was there any discussion between yourself and Joe with respect to who would pay the rent on the trailer?

Mr. Vanapps: We agreed to pay a month in advance for the trailer. It wasn't so much Joe, it was Joe and the boys. Of if necessary, two months in advance for the trailer for the boys to live in.

The Hearing Officer: Would you identify yourself for the record?

Mr. Downs: My name is Harrison Downs, I'm the Ontario County Social Services Attorney.

The Hearing Officer: Right.

Mr. Downs: And it is my understanding that I assume, sitting across from me is a legal aid society man or not?

Mr. Berky: No. My name is Doug Berky.

The Hearing Officer: Do you have any further questions of this witness?

Mr. Downs: Yes. Was this a two bedroom that you—

Mr. Vanapps: No, it was a trailer.

Mr. Downs: Yes. Was it a two bedroom trailer.

Mr. Vanapps: I don't know. Joe probably knows the trailer better than I do. I didn't see the trailer.

Mr. Downs: Where was it?

Mr. Vanapps: In Rushville.

Mr. Downs: In the village?

Mr. Vanapps: In the village.

Mr. Downs: Was it in the County of Ontario or Yates, do you know?

Mr. Vanapps: I think it was in Ontario.

Mrs. Bacon: Scott's Trailer Park.

Mr. Vanapps: Scott's Trailer, I think it was in Ontario.

The Hearing Officer: Anything further from this witness?

Mr. Downs: No, sir.

The Hearing Officer: Do you have any questions of this witness?

Mr. Berky: How often did the Beverly's work for you, was it a steady job, or was it off and on?

Mr. Vanapps: Joe worked pretty steady for us right along, and some of these other boys here; Odell and John, they were in school. I'm going back here last spring. You know, they were in school, out of school. Some days they would work, and some they wouldn't. And Willie, he worked some. Some he didn't. But Joe was the one that was the regular worker.

Mr. Berky: Was there always work everyday? Everyday, eight hours work?

Mr. Vanapps: We, most of the time, had work. In other words, we ought to be able to run the boys forty hours a week and sometimes we get more than forty hours, if they wanted to work—that is right. These other lads never worked nowhere as near for us as these other three. Joe was the main worker, they were in school more or less. I guess, he quit sometime before school was out.

The Hearing Officer: All right. Anything further? Any further questions for this witness from either side?

Mrs. Dillinbeck: Yes.

The Hearing Officer: Do you want to identify yourself for the record?

Mrs. Dillinbeck: Yes. Kathleen Dillinbeck, Income Maintenance Supervisor. Mr. Vanapps, you say there was work when they wanted to work, in other words, there was times when there was work available and they wouldn't come to work?

Mr. Vanapps: Well, sometimes it happens that way, yes.

Mrs. Dillinbeck: That is all I wanted to know.

The Hearing Officer: Is there still work available?

Mr. Vanapps: Yes, for these boys.

Mrs. Dillinbeck: Didn't you state, or Mr. Emerson maybe I think, that you are desparately in need of help?

Mr. Vanapps: Yes, we need the boys, and they probably would get themselves forty hours a week. They would probably work Monday through Friday.

Mrs. Dillinbeck: What was the rate that they were paid at?

Mr. Vanapps: $2.00.

Mr. Berky: $2.00 per—

Mr. Vanapps: $2.00 per hour.

Mrs. Dillinbeck: And they were provided transportation, you would pick them up; right?

Mr. Vanapps: Transportation and also we bought their lunch at noon.

The Hearing Officer: Was that base rate $2.00 per hour?

Mr. Vanapps: That's right.

Mr. Downs: Was there an overtime rate?

Mr. Vanapps: No, no overtime on agriculture at all. Most of the time it would run about forty hours, once in a while you get forty-four hours.

Mr. Downs: Was there ever any indication from the boys that they had any physical difficulty in doing the job?

Mr. Vanapps: Never heard it from them, they are right here; we can ask them. But I never noticed any problem with the physical end. I know them all, the whole four boys.

Mr. Downs: Did you or any of the boys discuss their living elsewhere than in the trailer?

Mr. Vanapps: No, never got involved with it at all. Never got involved with it. I knew they had a problem, being Joe, had to leave the place in Potter (phonetic spelling) and I know that he went with his sister in Rushville and over to Gorum (phonetic spelling). Then, I lost track of him out here in Canandaigua. And we know, I guess I heard he and Sandy talk, that is Mr. Emerson, we would help him get into the trailer park, the one in Scott's Trailer—work in Rushville, and we would still employ him; three of them or four of them, it didn't matter. We got work for the whole four of them.

The Hearing Officer: Yes, okay.

Mr. Vanapps: But we don't have trailers we own. We are not in the house business.

The Hearing Officer: Yes, okay. Anything further?

Mr. Berky: You said that you were going to pay the rent?

Mr. Vanapps: Yes.

Mr. Berky: Was this to be paid back?

Mr. Vanapps: Sure it was to be paid back.

Mr. Berky: How—you were going to take it out of their wages?

Mr. Vanapps: I hope they would pay it back some way, yes.

Mr. Berky: Is this all you offered to pay for, was the rent?

Mr. Vanapps: Yes. They have to have a roof over their head, or their in trouble. I thought we could help them a little bit. You know, it's some place to live.

The Hearing Officer: Okay, anything further?

Mrs. Bacon: No.

The Hearing Officer: Do you have any testimony that you wish to offer on behalf of the appellant?

Mr. Berky: Well, I would like to ask Mr. Vanapps—

The Hearing Officer: Yes, go ahead.

Mr. Berky: Okay. First, you said that the four of them lived together and they worked together too. Joe, why didn't you take Mr. Emerson up on his offer to take Scott's trailer?

Mr. Beverly: One reason, this guy Scottie, my mother used to rent from him. In other words, he didn't like the family all too much. Anyway, in the first place, he didn't want to rent us the trailer, because Sandy talked to him. Sandy had a hard time convincing him to rent us the trailer, because we—

Mr. John Beverly: Besides the point—we worked for Sandy Emerson—

The Hearing Officer: Would you identify yourself for the record?

Mr. John Beverly: Me?

The Hearing Officer: This last gentleman.

Mr. John Beverly: John Beverly.

The Hearing Officer: Okay, go ahead.

Mr. John Beverly: Like we put in only sometimes two and three days out of a week. Now, he stated that he gave from forty to forty-four hours a week sometimes. Maybe some of the other workers he had did, but sometimes we put only two to three days a week.

Mr. Berky: Well, was that your fault or was that because—

Mr. John Beverly: That was they fault there, they fault. Sometimes it was our fault, I have to admit it. But, it was their fault because, like, when we was working out from two to three days a week and Sandy—I mean, Scottie said the trailer might come to $120 a month; I think. And plus the gas, electric and he pay the water. And, like, we had to pay the grocery bill. How could we go on with that little bit of pay and live and eat too; and still pay the rent, heat and light bill and stuff.

The Hearing Officer: We had an off the record discussion. Go ahead.

Mr. Berky: Okay. Did you owe any debts, bills at the time, when you quit?

Mr. Beverly: Yes. One to this lady that run this store in Potter, because she help us rent. And I owe Sandy Emerson some money too, around $75.00.

Mr. Berky: And your brothers, did they owe money also?

Mr. Beverly: Yes, they owe this rent, this lady that run the store in Potter.

Mr. Berky: You didn't think you could take his offer because you didn't think you could afford it?

Mr. Beverly: That's right.

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit.

Mr. Berky: I'd like to—in the pamphlet that the Social Services gave out, I'd like to question a couple of things in regards to John's statement that there wasn't a—

The Hearing Officer: John who?

Mr. Berky: John Beverly.

The Hearing Officer: All right.

Mr. Berky: That there wasn't always steady work; and in Section 335.6 under (c) number (2) it says, the salary—a person shall be deemed not to have refused willfully to accept employment, if evidence shows that. Okay, under number two, the salary or wages was less than the minimum required by law.

Mr. Vanapps: We checked.

Mr. Downs: No evidence here regarding the minimum required by law for agricultural workers.

The Hearing Officer: Be this as it may, he was paying him $2.00 an hour which is above the minimum.

Mr. Berky: But I was questioning the amount of hours that they work a week.

The Hearing Officer: All right. I get your point.

Mr. Berky: And also, in Section 335.7, it says, a person who voluntarily terminates his employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof, and it goes on. One, I really don't—I'm sure that they didn't quit to become eligible for public assistance. They have been looking for other work, and they haven't been able to find it. They are staying in a friend's house now, and they have to be out by Friday; and then they will have no other place to stay. I talked with the man at Emerson's, Burt Alexander, and at the time he said he didn't know if there was any housing available around the area, and they have agreed that they would go back to work if there was housing.

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit.

Mrs. John Beverly: Mrs. John Beverly, we also told them down there that we came to welfare—we needed money—if they would let us have the money to find a place to live, you know, and get us a job or something; that we would pay them back. Because we tried to avoid coming here to get help.

The Hearing Officer: Okay, anything further?

Mr. Downs: Yes. Joseph, are you the only one who applied for home relief?

Mr. Beverly: Yes. No, not really because all three of us came up.

Mr. Downs: You say three, which three signed?

Mr. Beverly: Right here.

Mr. Downs: Will you name them?

Mr. Beverly: John Beverly and all the other Beverlys.

Mr. Downs: So there are three who have applied and signed for home relief, is that what you're saying?

Mr. Beverly: No, not really. See, she gave us a paper for all three of us to sign and come back later. So after I came in, they heard what they said, after I came in, so they the two just forgot about coming in.

Mr. Downs: I see. Originally the three of you came in to apply, but only you ended up applying, is that correct?

Mr. Beverly: Yes.

Mr. Downs: Now, was there any effort made by you to acquire unemployment insurance in Yates County?

Mr. Beverly: No.

Mr. Downs: Or in Ontario County?

Mr. Beverly: I don't think so.

Mr. Downs: Well, there are four of you here, did any of you apply for unemployment insurance, since you were last working?

Mr. John Beverly: No, I tried it one time, but I was

not eligible because I hadn't worked twenty weeks or something like that.

Mr. Downs: You what, sir?

The Hearing Officer: He hadn't worked twenty weeks. Okay, anything further?

Mr. Downs: Yes. I wish to state with respect to the comment made regarding the change of location, there is a presumption in the statute, and I'm referring to the Social Services Law Section 131, paragraph ten, on which all of these Regulations flow. That any person who applies for home relief or requests an increase in the grant within 75 days after voluntarily terminating his employment or reducing his earning capacity, shall, unless otherwise required by Federal Law and Regulations—and there is none applicable to home relief—be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, and the absence of evidence to the contrary supplied by such person. Is it your contention, sir, that there is evidence here pertains to that presumption?

Mr. Berky: With the last sentence in there?

Mr. Downs: Yes.

Mr. Berky: Yes.

Mr. Downs: And does that evidence say that they found that they were unable to live in the trailer without having been there?

Mr. Berky: That they were unable to afford it.

Mr. Downs: Even though its rental for the first one or two months would have been advanced to them by the employer?

Mr. Berky: They still—that would have to be paid back.

Mr. Downs: Yes.

The Hearing Officer: Okay, I think we have that issue fairly well on the record. Anything further from anyone? Anything further from either side?

Mr. Berky: I would like to ask Social Services why, when they first came in, they weren't—they were not given a written statement of denial?

Mrs. Bacon: They were.

Mr. Berky: No they weren't.

Mr. Downs: Joseph was.

Mrs. Bacon: Joseph was given a written statement and I have a copy of it in the packet. Oh, it came back.

Mrs. Dillinbeck: He gave me the wrong address. On the application he lists 101 Clark Street, where the denial letter was sent; and there was—he was not living there at the time.

The Hearing Officer: All right.

Mr. Downs: Shown to the advocate is the oirginal envelope bearing the postal indication that it was not deliverable at that address.

Mr. Berky: Also, they were not told, if that's the procedure that they are told about, being able to request a fair hearing. But they were not verbally told.

Mrs. Bacon: Mr. Berky, when you came into the office on 2/22/74, did I not inform you that they had the right to ask for a fair hearing, and did I not recommend that you ask for a fair hearing?

Mr. Berky: Okay, this was—I came in after they did.

The Hearing Officer: Yes, but do we have anymore evidence pertaining to the case, specifically?

Mr. Downs: I don't understand one thing, Mr. Referee.

The Hearing Officer: Well, I'm going to go off the record momentarily. Any further testimony for either side?

Transcript of Fair Hearing in the Matter of the Appeal of Joseph Beverly, Exhibit "E" to Maher Affidavit.

Mr. John Beverly: We came in here one day, the first day we came into try to get Social Services, and I don't know who was here; but these two boys came in—we asked the lady we said—the first boy said, "we need money to get back to Geneva." We needed money to get back to Geneva, but we were living with my mother at the time, the time being. So we said, could we have enough money to catch the money back to Geneva, and she inquired to us, no. Now, why is that?

Mr. Beverly: She said get back the best way you can.

Mr. John Beverly: She said get back the best way you could. Now, why is that?

The Hearing Officer: Okay, anything further from either side? I declare this hearing closed.

CERTIFIED TO BE A TRUE
AND ACCURATE TRANSCRIPT
OF THE TAPE RECORDING
MADE OF THIS FAIR HEARING.

JOSEPH RILEY
Bureau of Fair Hearings.

Answer of Defendant Abe Lavine to Plaintiff's Interrogatories and Request for Production of Documents.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

INTERROGATORY 1:

1. State the exact or approximate number of persons disqualified from receiving public assistance in New York State due to the operation, enforcement and application of Section 131(10) of the New York Social Services Law and/or Part 385.7 of the New York Code of Rules and Regulations,

(a) In the year 1971,

(b) In the year 1972,

(c) In the year 1973, and

1.1 If the above information is not presently available, provide such information as is available which indicates the number of persons disqualified under the said law and regulation, and state for each year whether the number of such persons exceeds

(a) 500,

(b) 1,000,

(c) 2,000,

(d) 5,000, and

state the basis for such estimates.

Answer of Defendant Abe Lavine to Plaintiff's Interrogatories and Request for Production of Documents.

ANSWER 1:

The Department of Social Services has no statistics to indicate the number of denials of assistance based on Section 131(10) of the New York Social Services Law or 18 N.Y.C.R.R. § 385.7 in any of the named years.

ANSWER 1.1:

A very rough estimate of the number of denials would be that it exceeds 1,000 for 1973. The estimate is based on the following reasoning:

A textual examination of the approximately 3,000 fair hearing decisions rendered in December, 1973, revealed that 11 involved interpretation of Section 131(10). Extrapolating that number for 12 months gives an estimate of 132 fair hearing decisions a year involving Section 131(10). A rough general rule of thumb is that the ratio of denials to fair hearing decisions in approximately 10 to 1; indicating around 1,320 denials a year. This analysis is so rough that very little reliance can be placed upon it.

INTERROGATORY 5:

5. State whether temporary or emergency assistance is granted under Section 133 of the New York Social Services Law, or under any other provision of law or regulation, to needy persons disqualified from receiving assistance under Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, pending decisions after "Fair Hearings" requested by such persons, and

5.1 Identify all rules, regulations, policy statements, guidelines or other administrative directives issued in connection with the provision of emergency or temporary assistance to Home Relief applicants.

Answer of Defendant Abe Lavine to Plaintiff's Interrogatories and Request for Production of Documents.

ANSWER 2:

Temporary emergency assistance under § 133 of the Social Services Act is available by its terms only "pending completion of an investigation;" and thus is unavailable after the local agency has denied assistance, whether that denial is based on § 131(10) or any other provision of the Law. Other emergency assistance is available to persons who are eligible for assistance under Social Services Law § 131-a(6):

> "(a) replacement of necessary furniture and clothing for persons in need of public assistance who have suffered the loss of such items as the result of fire, flood or other like catastrophe, provided provisions therefore cannot otherwise be made;
>
> (b) purchase of necessary and essential furniture required for the establishment of a home for persons in need of public assistance, provided provision therefor cannot otherwise be made;
>
> (c) essential repair of heating equipment, cooking stoves, and refrigerators used by persons in need of public assistance in their homes, provided provision therefor cannot otherwise be made."

Payment of shelter allowance when that payment has not been made by the recipient is provided under Social Services Law § 131-a(7).

ANSWER 2.1

The policy of the Department in this regard is set out in the following: 18 N.Y.C.R.R. §§ 370.2; 370.3(e); 351.8 (c)(4); Bulletin #150 P. 7.

Request for production of documents 1:

All forms statistical reports or other date summaries compiled in connection with the operation, enforcement and application of Section 131(10) of the New York Social Services Law and Part 385.7 of the New York Code of Rules and Regulations, including, without limitation, the following items:

(a) A form entitled "Work Reform Monthly Report, DSS Form No. 1790";

(b) A form entitled "Statistical Report on Specified Items for Applications Disposed or Cases Closed in PA Program, DSS Form No. 636";

(c) A form entitled "Monthly Statistical Report on Reasons for Closing PA Cases, DSS Form No. 848";

(d) A form entitled "Monthly Statistical Report on Home Relief, DSS Form No. 986";

(e) A form entitled "Statistical Information Closures, DSS Form No. 1192";

(f) A form entitled "Register of Applications and Authorization of Emergency Assistance, DSS Form No. 880";

(g) A form entitled "Monthly Statistical Report on Reasons for Opening Public Assistance Cases, DDS Form No. 981".

ANSWER 3:

We have been unable to identify the forms referred to in "(a)" and "(b)". There are no Department forms with

those numbers. Nor could we identify any forms or documents by the titles indicated in "(a)" and "(b)". David Kellogg, Esq., of this Department, informed Gerald A. Norlander, Esq., of plaintiffs' counsel staff, of this inability and requested further identification of these documents. Mr. Norlander told Mr. Kellogg that the forms were listed in a Department bulletin but despite his request, Mr. Kellogg received no citation to any bulletin. We remain ready to supply the alleged documents if they can be identified. The documents described in "(c)" through "(g)" are appended hereto and identified by subparagraph number.

.....

EDWARD W. MAHER

Documents 1 (c)

FORM DSS-848 (REV. 4/72)

MONTHLY (OR QUARTERLY ADC) STATISTICAL REPORT ON REASONS FOR CLOSING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT:

MONTH:

CLOSED	S.S.D.	PROGRAM	MO	ADC-U QUARTER OF:
2		1 ☐ OAA 2 ☐ ADC 3 ☐ AB 4 ☐ AD 5 ☐ HR 6 ☐ ADC-U 7 ☐ EAF		☐ Jan-Mar ☐ Apr-June ☐ July-Sept ☐ Oct-Dec
Col. 1	(2-3)	Col. 4	(5-6)	

REASON FOR CLOSING	State Office Code (7-9)		Cases Closed: Total Entries (10-13) I	White (14-17) II	Nonwhite (18-21) III
TOTAL	0	00			
TRANSFERS					
Old-age assistance	6	61			
Aid to dependent children	6	62			
Assistance to the blind	6	63			
Aid to the disabled	6	64			
Home relief	6	65			
EAF	6	66			
HEALTH					
Death	7	01			
No longer blind, disabled or incapacitated	7	43			
Admitted to institution:					
Public institution	7	51			
Private institution	7	52			
FAMILY					
Financial change due to:					
Absent ADC parent's return	8	11			
Remarriage of ADC parent	8	12			
No financial change but ADC parent returned home or remarried	8	44			
FINANCIAL					
Employment or increased earnings of person in home:					
Recipient or spouse (OAA, AB, AD, HR, EAF)	9	02			
ADC father	9	04			
ADC mother	9	05			
ADC child	9	06			
Other person	9	07			
Receipt of or increase in support from person outside home:					
Absent ADC father	9	13			
Other person	9	14			
Receipt of or increase in benefits of persons under:					
Governmental program					
OASDHI	9	21			
Other Federal	9	22			
State or local	9	23			
Nongovernmental program	9	25			
Other material change in income or resources	9	26			
LEGAL					
Decreased needs	x	33			
Change in State law or agency policy	x	41			
Refusal after acceptance to comply with eligibility requirement	x	42			
No eligible child in home	x	46			
Client's request	x	71			
No contact	x	72			
Other (including moved out of district)	x	73			

SIGNATURE: X — TITLE — DATE

FORM DSS-848 (8/69) (Formerly RS-197)

MONTHLY (OR QUARTERLY ADC-U) STATISTICAL REPORT ON REASONS FOR CLOSING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT: Westchester — We. chester County

MONTH: Dec 1973

CLOSED	S.S.D.	PROGRAM	MO	ADC-U QUARTER OF:
2	55	1 ☐ OAA 2 ☒ ADC + ADC-U 3 ☐ AB 4 ☐ AD 5 ☐ HR 6 ☐ ADC-U	12	☐ Jan-Mar ☐ Apr-June ☐ July-Sept ☐ Oct-Dec
Col. 1	(2-3)	Col. 4	(5-6)	

REASON FOR CLOSING	State Office Code (7-9)		Cases Closed: Total Entries (10-13) I	White (14-17) II	Nonwhite (18-21) III
TOTAL	0	00	207	102	105
TRANSFERS					
Old-age assistance	6	61			
Aid to dependent children	6	62			
Assistance to the blind	6	63			
Aid to the disabled	6	64	2	1	1
Home relief	6	65	9	5	4
HEALTH					
Death	7	01	1	1	—
No longer blind, disabled or incapacitated	7	43			
Admitted to institution:					
Public institution	7	51	1	1	—
Private institution	7	52			
FAMILY					
Financial change due to:					
Absent ADC parent's return	8	11	2	1	1
Remarriage of ADC parent	8	12			
No financial change but ADC parent returned home or remarried	8	44	1	1	—
FINANCIAL					
Employment or increased earnings of person in home:					
Recipient or spouse (OAA, AB, AD, HR)	9	02			
ADC father	9	04	8	4	4
ADC mother	9	05	9	5	4
ADC child	9	06			
Other person	9	07	1	—	1
Receipt of or increase in support from person outside home:					
Absent ADC father	9	13	1	1	—
Other person	9	14			
Receipt of or increase in benefits of persons under:					
Governmental program:					
OASDHI	9	21	3	—	3
Other Federal	9	22	1	—	1
State or local	9	23	1	—	1
Nongovernmental program	9	25			
Other material change in income or resources	9	26	1	1	—
LEGAL					
Decreased needs	x	33	5	3	2
Change in State law or agency policy	x	41	18	5	13
Refusal after acceptance to comply with eligibility requirement	x	42	29	15	14
No eligible child in home	x	46	4	3	1
Client's request	x	71	39	20	19
No contact	x	72	51	16	15
Other (including moved out of district)	x	73	40	20	20

SIGNATURE: X Betty A. Jones — TITLE: Senior Typist — DATE: 1-31-74

BEST COPY AVAILABLE

FORM DSS-848 (6/69) (Formerly BS-197) (C)

MONTHLY (OR QUARTERLY ADC) STATISTICAL REPORT ON REASONS FOR CLOSING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT: West Chester County

MONTH: Dec 1973

CLOSED	S.S.D.	PROGRAM	NO	ADC-U QUARTER OF:
2	55	1 ☐ OAA 2 ☐ ADC 3 ☒ AB 4 ☐ AD 5 ☐ HR 6 ☐ ADC-U	12	☐ Jan-Mar ☐ Apr-June ☐ July-Sept ☐ Oct-Dec
Col. 1	(2-3)	Col. 4	(5-6)	

REASON FOR CLOSING	State Office Code (7-9)		Cases Closed: Total Entries (10-13) I	White (14-17) II	Nonwhite (18-21) III
TRANSFERS TOTAL	0	00	2.✓	1.	1.
Old-age assistance	6	61			
Aid to dependent children	6	62			
Assistance to the blind	6	63			
Aid to the disabled	6	64			
Home relief	6	65			
HEALTH					
Death	7	01			
No longer blind, disabled or incapacitated	7	43			
Admitted to institution:					
Public institution	7	51			
Private institution	7	52			
FAMILY					
Financial change due to:					
Absent ADC parent's return	8	11			
Remarriage of ADC parent	8	12			
No financial change but ADC parent returned home or remarried	8	44			
FINANCIAL					
Employment or increased earnings of person in home:					
Recipient or spouse (OAA, AB, AD, HR)	9	02			
ADC father	9	04			
ADC mother	9	05			
ADC child	9	06			
Other person	9	07			
Receipt of or increase in support from person outside home:					
Absent ADC father	9	13			
Other person	9	14			
Receipt of or increase in benefits of persons under:					
Governmental program:					
OASDHI	9	21	2	1	1
Other Federal	9	22			
State or local	9	23			
Nongovernmental program	9	25			
Other material change in income or resources	9	26			
LEGAL					
Deceased needs	x	33			
Change in State law or agency policy	x	41			
Refusal after acceptance to comply with eligibility requirement	x	42			
No eligible child in home	x	46			
Client's request	x	71			
No contact	x	72			
Other (including moved out of district)	x	73			

SIGNATURE: x Betty B. James — TITLE: Senior Typist — DATE: 1-31-74

FORM DSS-848 (6/69) (Formerly BS-197)

MONTHLY (OR QUARTERLY ADC) STATISTICAL REPORT ON REASONS FOR CLOSING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT: Wes Chester County

MONTH: Dec 1973

CLOSED	S.S.D.	PROGRAM	NO	ADC-U QUARTER OF:
2	55	1 ☐ OAA 2 ☐ ADC 3 ☐ AB 4 ☒ AD 5 ☐ HR 6 ☐ ADC-U	12	☐ Jan-Mar ☐ Apr-June ☐ July-Sept ☐ Oct-Dec
Col. 1	(2-3)	Col. 4	(5-6)	

REASON FOR CLOSING	State Office Code (7-9)		Cases Closed: Total Entries (10-13) I	White (14-17) II	Nonwhite (18-21) III
TRANSFERS TOTAL	0	00	110.	65.	45
Old-age assistance	6	61	6	5	1
Aid to dependent children	6	62			
Assistance to the blind	6	63	1	1	—
Aid to the disabled	6	64			
Home relief	6	65	13	7	6
HEALTH					
Death	7	01	6	6	—
No longer blind, disabled or incapacitated	7	43	2	—	2
Admitted to institution:					
Public institution	7	51	7	4	3
Private institution	7	52			
FAMILY					
Financial change due to:					
Absent ADC parent's return	8	11			
Remarriage of ADC parent	8	12			
No financial change but ADC parent returned home or remarried	8	44			
FINANCIAL					
Employment or increased earnings of person in home:					
Recipient or spouse (OAA, AB, AD, HR)	9	02	7	2	5
ADC father	9	04			
ADC mother	9	05			
ADC child	9	06			
Other person	9	07			
Receipt of or increase in support from person outside home:					
Absent ADC father	9	13			
Other person	9	14			
Receipt of or increase in benefits of persons under:					
Governmental program:					
OASDHI	9	21	9	6	3
Other Federal	9	22			
State or local	9	23			
Nongovernmental program	9	25			
Other material change in income or resources	9	26	3	3	—
LEGAL					
Deceased needs	x	33	1	—	1
Change in State law or agency policy	x	41			
Refusal after acceptance to comply with eligibility requirement	x	42	11	4	7
No eligible child in home	x	46			
Client's request	x	71	5	2	3
No contact	x	72	19	9	3
Other (including moved out of district)	x	73	13	6	7

SIGNATURE: x Betty B. James — TITLE: Senior Typist — DATE: 1-31-74

2-8-74 9:27

Documents 1(d)

FORM DSS-986 (REV. 9/66) (Formerly [illegible]-33)

LOCAL ADMINISTRATIVE AGENCY

MONTHLY STATISTICAL REPORT

MONTH AND YEAR

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SECTION A. NUMBER OF APPLICATIONS

1. Pending from last month - item 5, last month
2. Received during month
3. Total during month - item 1 plus 2
4. Disposed of during month
   a. Accepted for relief - same as item 7
   b. Not accepted for relief
5. Pending at end of month - items 3 minus item 4

SECTION B. MOVEMENT OF CASES APPROVED FOR FINANCIAL ASSISTANCE

6. Continued from last month - item 10, last month
7. Added during month - same as item 4a
   a. New: never previously approved for Home Relief in the district
   b. Reopened
8. Total cases open during month - item 6 plus 7
9. Closed during month
10. Remaining at end of month - item 8 minus item 9

SECTION C. TOTAL CASES AND HOME RELIEF PAYMENTS

11. Total number of cases receiving relief during month - item 11a plus 11b
    a. Family cases — NUMBER OF INDIVIDUALS
    b. One-person cases
12. Total amount of relief payments - item 12a plus 12b
    a. Amount of relief for family cases
    b. Amount of relief for one-person cases

SECTION D. OTHER REIMBURSABLE RELIEF

13. Total special home relief activities (Specify below)
    a. _____
    b. _____
    c. _____

SECTION E. END OF YEAR ONLY

14. Total applications pending on December 31 - must agree with item 5
    a. Less than one month
    b. One month but less than two
    c. Two months or longer
    d. Unknown

SIGNATURE OF PERSON SUBMITTING REPORT	TITLE	DATE SIGNED

FORM DSS-986 (REV. 9/66) (Formerly HR-33) (1)

LOCAL ADMINISTRATIVE AGENCY: Westchester County

MONTHLY STATISTICAL REPORT

MONTH AND YEAR: December 1973

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SECTION A. NUMBER OF APPLICATIONS

1. Pending from last month - item 5, last month		615
2. Received during month		524
3. Total during month - item 1 plus 2		1139
4. Disposed of during month		394
a. Accepted for relief - same as item 7	208	
b. Not accepted for relief	186	
5. Pending at end of month - items 3 minus item 4		745

SECTION B. MOVEMENT OF CASES APPROVED FOR FINANCIAL ASSISTANCE

6. Continued from last month - item 10, last month		3340
7. Added during month - same as item 4a		208
a. New: never previously approved for Home Relief in the district	159	
b. Reopened	49	
8. Total cases open during month - item 6 plus 7		3548
9. Closed during month		163
10. Remaining at end of month - item 8 minus item 9		3385

SECTION C. TOTAL CASES AND HOME RELIEF PAYMENTS

11. Total number of cases receiving relief during month - item 11a plus 11b ÷3477=$110.77 DEC.		2358
a. Family cases — NUMBER OF INDIVIDUALS 1442 (4.5)	323	
b. One-person cases (1.1)	2035	
12. Total amount of relief payments - item 12a plus 12b		385,152. DEC. 00
a. Amount of relief for family cases $79.92 INC.	715,237. 85 INC.	$356.77 INC.
b. Amount of relief for one-person cases	269,914. 85 DEC.	$132.64 DEC.

SECTION D. OTHER REIMBURSABLE RELIEF

13. Total special home relief activities (Specify below)		
a. _____		
b. _____		
c. _____		

SECTION E. END OF YEAR ONLY

14. Total applications pending on December 31 - must agree with item 5		745
a. Less than one month	117	
b. One month but less than two	54	
c. Two months or longer	574	
d. Unknown		

SIGNATURE OF PERSON SUBMITTING REPORT	TITLE	DATE SIGNED
Betty A. James	Senior Typist + adjustment	1-31-74

FORM DSS-1192 (REV. 5/73)

STATISTICAL INFORMATION ON CLOSURES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

TO: (Associate Rehabilitation Counselor) Central Office

FROM: (Counselor's Signature) — AREA

DATE COMPLETED — MONTH OF REPORT

1 CLIENT	2 CASE NO.	3 CLOSURE STATUS	4 TYPE OF CLOSURE	COMPLETE ITEMS 5 THRU 10 FOR CLOSURES IN STATUS 26 ONLY FROM CLOSURE REPORT FORM R-300					
				5 Referral Date (Part 1C)	6 Date Ref. Process Completed (Part 2D)	7 Months Waiting For Service (6 less 5)	8 Closure Date (Part 3)	9 Months in Active Service (8 less 6)	10 Months To Complete Tote Rehab. Proces (8 less 5)

INSTRUCTIONS

Item 4 - Type of Closure - Use code HM for homemaker and unpaid family worker and code RE for remunerative employment closures including competitive placements, sheltered workshop, work activity center, and vending stand placements.

Item 5 - Referral Date - Enter here the date indicated from Part 1C from the R-300 closure form.

Item 6 - Date Referral Process Completed - Enter here the date listed under Part 2D of the R-300.

Item 7 - Months Waiting for Service - Determine the time interval in months between the referral date (Item 5) and the date the referral process was completed (Item 6). Any part of a month consisting of 15 or more days should be counted as one full month and any part of the month less than 15 days shall be disregarded.

Item 8 - Closure Date - Enter here the date listed on the bottom of Part 3 on the R-300 which is the date that the case is being closed.

Item 9 - Months in Active Service - Determine the time interval in months between the date the client entered active service (Item 6) and the closure date (Item 8). Any part of a month of 15 or more days will be counted as one month and less than 15 days will be disregarded.

Item 10 - Months to Complete Total Rehabilitation Process - Determine the time interval in months between the referral date (Item 5) and the closure date (Item 8). Any part of the month of 15 or more days will be counted as one month and less than 15 days will be disregarded.

Documents 1(e)

490

FORM DSS-1192 (REV. 5/73)

STATISTICAL INFORMATION ON CLOSURES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

TO: (Associate Rehabilitation Counselor) Central Office

FROM: (Counselor's Signature) William L. Kane — AREA 65

DATE COMPLETED 2/21/74 — MONTH OF REPORT February

1 CLIENT	2 CASE NO.	3 CLOSURE STATUS	4 TYPE OF CLOSURE	COMPLETE ITEMS 5 THRU 10 FOR CLOSURES IN STATUS 26 ONLY FROM CLOSURE REPORT FORM R-300					
				5 Referral Date (Part 1C)	6 Date Ref. Process Completed (Part 2D)	7 Months Waiting For Service (6 less 5)	8 Closure Date (Part 3)	9 Months in Active Service (8 less 6)	10 Months To Complete Tote Rehab. Proces (9 less 5)
Winchell, Phileatus	51197	(26)	R.E.	4/1/70	12/2/70	8	2/1/74	38	1'
Bradford, Raymond	51638	(26)	H.M.	2/26/73	3/22/73	1	2/20/74	11	12
Timpone, Angelina	51130	(26)	H.M.	4/3/72	2/21/73	11	2/20/74	12	23
Couch, Kathryn	51484	08,(02)							
Tushak, Francis	51824	08,(00)							
Parfitt, Cynthia	51804	08,(00)							

INSTRUCTIONS

Item 4 - Type of Closure - Use code HM for homemaker and unpaid family worker and code RE for remunerative employment closures including competitive placements, sheltered workshop, work activity center, and vending stand placements.

Item 5 - Referral Date - Enter here the date indicated from Part 1C from the R-300 closure form.

Item 6 - Date Referral Process Completed - Enter here the date listed under Part 2D of the R-300.

Item 7 - Months Waiting for Service - Determine the time interval in months between the referral date (Item 5) and the date the referral process was completed (Item 6). Any part of a month consisting of 15 or more days should be counted as one full month and any part of the month less than 15 days shall be disregarded.

Item 8 - Closure Date - Enter here the date listed on the bottom of Part 3 on the R-300 which is the date that the case is being closed.

Item 9 - Months in Active Service - Determine the time interval in months between the date the client entered active service (Item 6) and the closure date (Item 8). Any part of a month of 15 or more days will be counted as one month and less than 15 days will be disregarded.

Item 10 - Months to Complete Total Rehabilitation Process - Determine the time interval in months between the referral date (Item 5) and the closure date (Item 8). Any part of the month of 15 or more days will be counted as one month and less than 15 days will be disregarded.

491

FORM DSS-1192 (REV. 5/73)

STATISTICAL INFORMATION ON CLOSURES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

TO: (Associate Rehabilitation Counselor) Central Office Mr. DeSantis

FROM: (Counselor's Signature) C. Augusto (Jay C. Brown) Carl R. Augusto — AREA 45

DATE COMPLETED 2/18/74 — MONTH OF REPORT February 1974

1 CLIENT	2 CASE NO.	3 CLOSURE STATUS	4 TYPE OF CLOSURE	COMPLETE ITEMS 5 THRU 10 FOR CLOSURES IN STATUS 26 ONLY FROM CLOSURE REPORT FORM R-300					
				5 Referral Date (Part 1C)	6 Date Ref. Process Completed (Part 2D)	7 Months Waiting For Service (6 less 5)	8 Closure Date (Part 3)	9 Months in Active Service (8 less 6)	10 Months To Complete Total Rehab. Process (8 less 5)
McSwain, Walter	51608	(26)	RE	12/1/72	5/7/73	5	2/18/74	10	15
Crane, Antoinette	51699	(26)	HM	5/1/73	9/25/73	5	2/18/74	5	10
Krieger, Helen	51818	08 - from (00)							
Clancy, John	51813	08 - from (02)							
Golino, Elsie	51452	08 - from (00)							

INSTRUCTIONS

Item 4 - Type of Closure - Use code HM for homemaker and unpaid family worker and code RE for remunerative employment closures including competitive placements, sheltered workshop, work activity center, and vending stand placements.
Item 5 - Referral Date - Enter here the date indicated from Part 1C from the R-300 closure form.
Item 6 - Date Referral Process Completed - Enter here the date listed under Part 2D of the R-300.
Item 7 - Months Waiting for Service - Determine the time interval in months between the referral date (Item 5) and the date the referral process was completed (Item 6). Any part of a month consisting of 15 or more days should be counted as one full month and any part of the month less than 15 days shall be disregarded.
[illegible] the date listed on the bottom of Part 3 on the R-300 which is the date that the case is being closed.
[illegible] the time interval in months between the date the client entered active service (Item 6) and the closure date (Item 8). [illegible] counted as one month and less than 15 days will be disregarded.
[illegible] Determine the time interval in months between the referral date (Item 5) and the closure date (Item 8). [illegible] one month and less than 15 days will be disregarded.

492

FORM DSS-1192 (REV. 5/73)

STATISTICAL INFORMATION ON CLOSURES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

TO: (Associate Rehabilitation Counselor) Central Office

FROM: (Counselor's Signature) [illegible] Anne Brenner — AREA 05

DATE COMPLETED 2/20/74 — MONTH OF REPORT Feb.

1 CLIENT	2 CASE NO.	3 CLOSURE STATUS	4 TYPE OF CLOSURE	COMPLETE ITEMS 5 THRU 10 FOR CLOSURES IN STATUS 26 ONLY FROM CLOSURE REPORT FORM R-300					
				5 Referral Date (Part 1C)	6 Date Ref. Process Completed (Part 2D)	7 Months Waiting For Service (6 less 5)	8 Closure Date (Part 3)	9 Months in Active Service (8 less 6)	10 Months To Complete Total Rehab. Process (8 less 5)
Cannon, Francis (00)	51800	08							
Marks, Alice (00)	41590-5	08							
Smith, Lucy (00)	51215	08							
Lorick, Sadie (02)	51310	08							
VanDuren, James (02)	51503	08							
Perlberg, Mary Jane	4898-5	(28)							
Weis, Edward E.	51597	(28)							
Improta, Anthony	51464	(26)	HM	3/1/72	9/4/73	18	2/19/74	6	24
Fletcher, Ada	51677	(26)	HM	4/2/73	7/2/73	3	2/19/74	8	11
Agnello, Gaedano	51745	(26)	HM	8/9/73	9/17/73	2	2/19/74	5	7

INSTRUCTIONS

Item 4 - Type of Closure - Use code HM for homemaker and unpaid family worker and code RE for remunerative employment closures including competitive placements, sheltered workshop, work activity center, and vending stand placements.
Item 5 - Referral Date - Enter here the date indicated from Part 1C from the R-300 closure form.
Item 6 - Date Referral Process Completed - Enter here the date listed under Part 2D of the R-300.
Item 7 - Months Waiting for Service - Determine the time interval in months between the referral date (Item 5) and the date the referral process was completed (Item 6). Any part of a month consisting of 15 or more days should be counted as one full month and any part of the month less than 15 days shall be disregarded.
[illegible] the date listed on the bottom of Part 3 on the R-300 which is the date that the case is being closed.
[illegible] the time interval in months between the date the client entered active service (Item 6) and the closure date (Item 8). [illegible] counted as one month and less than 15 days will be disregarded.
[illegible] Determine the time interval in months between the referral date (Item 5) and the closure date (Item 8). [illegible] one month and less than 15 days will be disregarded.

493

BEST COPY AVAILABLE

DSS

NAME OF SOCIAL SERVICES DISTRICT | TYPE OF ASSISTANCE | DATE

REGISTER OF APPLICATIONS AND AUTHORIZATION
FOR EMERGENCY ASSISTANCE

NYS

THE FOLLOWING PEOPLE DECLARE THAT THEY ARE ELIGIBLE AND ARE APPLYING FOR EMERGENCY ASSISTANCE TO NEEDY FAMILIES WITH CHILDREN:

FAMILY NAME	FIRST NAME OF HEAD OF HOUSEHOLD	SOCIAL SECURITY NUMBER	FAMILIES WITH CHILDREN UNDER 21		PERSONS NOT QUALIFIED FOR ADC (INC. CHILDREN) PAP	SIGNATURE OF APPLICANT
			ADULT'S RELATIONSHIP OF NEAREST RELATIVE TO CHILD	NUMBER OF CHILDREN UNDER 21		

Documents 1(g)

FORM DSS-581 (REV. 4/72)

MONTHLY STATIST L REPORT ON
REASONS FOR OPENING PUBLIC ASSISTANCE CASES

SOCIAL SERVICES DISTRICT

MONTH

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

OPENED	S.S.D.	PROGRAM	MO
1		1 ☐ OAA 2 ☐ ADC 3 ☐ AB 4 ☐ AD 5 ☐ HR 6 ☐ EAF	
Col. 1	(2-3)	Col. 4	(5-6)

REASON FOR OPENING	State Office Code (7-9)		Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
			1	11	111
TRANSFERS TOTAL	0	00			
Old-age assistance	1	81			
Assistance to the blind	1	82			
Aid to dependent children	1	83			
Aid to the disabled	1	84			
Home relief	1	85			
EAF	1	86			
HEALTH					
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:					
Recipient (OAA, AB, AD, HR, EAF)	2	01			
ADC Father	2	02			
ADC Mother	2	03			
Other ADC Grantee	2	04			
Loss of or reduction in support for child as a result of death of:					
ADC parent	2	21			
Loss of or reduction in support from other person in home as a result of:					
Death	2	31			
Illness, injury, or other impairment	2	33			
FAMILY					
Loss of or reduction in support for child as a result of:					
ADC parent leaving home for reason of:					
Divorce	3	22			
Separation	3	23			
Desertion	3	24			
Other (hospitalized, imprisoned, etc.)	3	25			
Other person in home leaving	3	32			
Increased need because of:					
Addition to household	3	72			
Other reason	3	75			
FINANCIAL					
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:					
Recipient (OAA, AB, AD, HR, EAF)	4	11			
ADC Father	4	12			
ADC Mother	4	13			
Other ADC Grantee	4	14			
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4	34			
Loss of or reduction in support from person outside home					
ADC Father	4	41			
Other person	4	42			
Loss of or reduction in other income	4	44			
Other material change in resources	4	53			
LEGAL					
Change in State law or agency policy	5	63			
Living below agency standards	5	92			
Other	5	95			

SIGNATURE | TITLE | DATE

MONTHLY STATISTICAL REPORT ON
REASONS FOR OPENING : JLIC ASSISTANCE CASES

Westchester County

Dec. 1973

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

OPENED	S.S.D.	PROGRAM	MO
1	55	1 ☒ OAA 2 ☐ ADC 3 ☐ AB 4 ☐ AD 5 ☐ HR 6 ☐ EAF	12
Col. 1	(2-3)	Col. 4	(5-6)

REASON FOR OPENING	State Office Code (7-9)		Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
			1	11	111
TRANSFERS TOTAL	0	00	42.	30.	12
Old-age assistance	1	81			
Assistance to the blind	1	82			
Aid to dependent children	1	83			
Aid to the disabled	1	84			
Home relief	1	85			
EAF	1	86			
HEALTH					
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:					
Recipient (OAA, AB, AD, HR, EAF)	2	01	15	11	2
ADC Father	2	02			
ADC Mother	2	03			
Other ADC Grantee	2	04			
Loss of or reduction in support for child as a result of death of:					
ADC parent	2	21			
Loss of or reduction in support from other person in home as a result of:					
Death	2	31			
Illness, injury, or other impairment	2	33	2	2	—
FAMILY					
Loss of or reduction in support for child as a result of:					
ADC parent leaving home for reason of:					
Divorce	3	22			
Separation	3	23			
Desertion	3	24			
Other (hospitalized, imprisoned, etc.)	3	25			
Other person in home leaving	3	32	1	—	1
Increased need because of:					
Addition to household	3	72			
Other reason	3	75	2	1	1
FINANCIAL					
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:					
Recipient (OAA, AB, AD, HR, EAF)	4	11	5	4	1
ADC Father	4	12			
ADC Mother	4	13			
Other ADC Grantee	4	14			
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4	34			
Loss of or reduction in support from person outside home					
ADC Father	4	41			
Other person	4	42			
Loss of or reduction in other income	4	44	2	1	1
Other material change in resources	4	53			
LEGAL					
Change in State law or agency policy	5	63			
Living below agency standards	5	92	13	9	4
Other	5	95	4	2	2

SIGNATURE Betty A. Jones | TITLE Senior Typist | DATE 2-5-74

2-5-74 G.H.

MONTHLY STATISTICAL REPORT ON REASONS FOR OPENING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

Westchester County — Dec. 1973

OPENED	S.S.D.	PROGRAM	MO
1	55	1 ☐ OAA 2 ☒ ADC 3 ☐ AB 4 ☐ AD 5 ☐ HR 6 ☐ EAF	12
Col. 1	(2-3)	Col. 4	(5-6)

+ADC-U

REASON FOR OPENING	State Office Code (7-9)	Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
		I	II	III
TRANSFERS TOTAL	0 00	183	84	99
Old-age assistance	1 81			
Assistance to the blind	1 82			
Aid to dependent children	1 83			
Aid to the disabled	1 84	6	2	4
Home relief	1 85	7	2	5
EAF	1 86			
HEALTH				
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:				
Recipient (OAA, AB, AD, HR, EAF)	2 01			
ADC Father	2 02	17	7	10
ADC Mother	2 03	15	8	7
Other ADC Grantee	2 04	2	—	2
Loss of or reduction in support for child as a result of death of:				
ADC parent	2 21	1	1	—
Loss of or reduction in support from other person in home as a result of:				
Death	2 31			
Illness, injury, or other impairment	2 33	2	—	2
FAMILY				
Loss of or reduction in support for child as a result of:				
ADC parent leaving home for reason of:				
Divorce	3 22	2	1	1
Separation	3 23	25	16	28
Desertion	3 24	17	9	8
Other (hospitalized, imprisoned, etc.)	3 25			
Other person in home leaving	3 32			
Increased need because of:				
Addition to household	3 72	3	1	2
Other reason	3 75	6	1	5
FINANCIAL				
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:				
Recipient (OAA, AB, AD, HR, EAF)	4 11			
ADC Father	4 12	10	9	1
ADC Mother	4 13	15	6	9
Other ADC Grantee	4 14	2	1	1
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4 34	4	—	4
Loss of or reduction in support from person outside home	4 41	8	4	4
ADC Father	4 42			
Other person	4 44	7	4	3
Loss of or reduction in other income	4 53	1	—	1
Other material change in resources				
LEGAL				
Change in State law or agency policy	5 63			
Living below agency standards	5 92	17	10	7
Other	5 95	33	12	21

SIGNATURE Betty A. Jones TITLE Senior Typist DATE 2-5-74

MONTHLY STATISTICAL REPORT ON REASONS FOR OPENING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

Westchester County — Dec 1973

OPENED	S.S.D.	PROGRAM	MO
1	55	1 ☐ OAA 2 ☐ ADC 3 ☐ AB 4 ☒ AD 5 ☐ HR 6 ☐ EAF	12
Col. 1	(2-3)	Col. 4	(5-6)

REASON FOR OPENING	State Office Code (7-9)	Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
		I	II	III
TRANSFERS TOTAL	0 00	109	55	54
Old-age assistance	1 81			
Assistance to the blind	1 82			
Aid to dependent children	1 83	6	3	5
Aid to the disabled	1 84			
Home relief	1 85	46	19	27
EAF	1 86			
HEALTH				
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:				
Recipient (OAA, AB, AD, HR, EAF)	2 01	24	17	7
ADC Father	2 02			
ADC Mother	2 03			
Other ADC Grantee	2 04			
Loss of or reduction in support for child as a result of death of:				
ADC parent	2 21			
Loss of or reduction in support from other person in home as a result of:				
Death	2 31	2	1	1
Illness, injury, or other impairment	2 33			
FAMILY				
Loss of or reduction in support for child as a result of:				
ADC parent leaving home for reason of:				
Divorce	3 22			
Separation	3 23			
Desertion	3 24			
Other (hospitalized, imprisoned, etc.)	3 25			
Other person in home leaving	3 32			
Increased need because of:				
Addition to household	3 72			
Other reason	3 75			
FINANCIAL				
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:				
Recipient (OAA, AB, AD, HR, EAF)	4 11	1	1	—
ADC Father	4 12			
ADC Mother	4 13			
Other ADC Grantee	4 14			
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4 34			
Loss of or reduction in support from person outside home	4 41			
ADC Father	4 42			
Other person	4 44	2	—	2
Loss of or reduction in other income	4 53	1	1	—
Other material change in resources				
LEGAL				
Change in State law or agency policy	5 63			
Living below agency standards	5 92	19	8	5
Other	5 95	11	8	4

SIGNATURE Betty A. Jones TITLE Senior Typist DATE 2-5-74

2-8-74

FORM DSS-861 (6/69) (Formerly RS-10E)

MONTHLY STATISTICAL REPORT ON REASONS FOR OPENING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT: Westchester County

MONTH: NOV 1973

OPENED	S.S.D.	PROGRAM	NO
1	55	1 ☐ OAA 2 ☐ ADC 3 ☐ AB 4 ☐ AD 5 ☒ HR + VA	11
Col. 1	(2-3)	Col. 4	(5-6)

REASON FOR OPENING	State Office Code (7-9)		Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
			I	II	III
TOTAL	0	00	318	136	182
TRANSFERS					
Old-age assistance	1	81			
Assistance to the blind	1	82			
Aid to dependent children	1	83	13	9	4
Aid to the disabled	1	84			
Home relief	1	85			
HEALTH					
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:					
Recipient (OAA, AB, AD, HR)	2	01	85	35	50
ADC Father	2	02			
ADC Mother	2	03			
Other ADC Grantee	2	04			
Loss of or reduction in support for child as a result of death of:					
ADC parent	2	21			
Loss of or reduction in support from other person in home as a result of:					
Death	2	31	2	1	1
Illness, injury, or other impairment	2	33			
FAMILY					
Loss of or reduction in support for child as a result of:					
ADC parent leaving home for reason of:					
Divorce	3	22			
Separation	3	23			
Desertion	3	24			
Other (hospitalized, imprisoned, etc.)	3	25			
Other person in home leaving	3	32			
Increased need because of:					
Addition to household	3	72			
Other reason	3	75	5	1	4
FINANCIAL					
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:					
Recipient (OAA, AB, AD, HR)	4	11	109	38	71
ADC Father	4	12			
ADC Mother	4	13			
Other ADC Grantee	4	14			
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4	34	6	5	1
Loss of or reduction in support from person outside home	4	41			
ADC Father	4	42			
Other person	4	44	8	3	5
Loss of or reduction in other income	4	53	7	3	4
Other material change in resources					
LEGAL					
Change in State law or agency policy	5	63	3	—	3
Living below agency standards	5	92	26	11	15
Other	5	95	43	26	17

SIGNATURE: Betty A. James TITLE: SENIOR Typist DATE: 1-7-74

FORM DSS-861 (6/69) (Formerly RS-10E)

MONTHLY STATISTICAL REPORT ON REASONS FOR OPENING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT: Westchester County

MONTH: Dec 1973

OPENED	S.S.D.	PROGRAM	NO
1	55	1 ☐ OAA 2 ☐ ADC 3 ☐ AB 4 ☐ AD 5 ☒ HR	12
Col. 1	(2-3)	Col. 4	(5-6)

REASON FOR OPENING	State Office Code (7-9)		Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
			I	II	III
TOTAL	0	00	205	100	105
TRANSFERS					
Old-age assistance	1	81	1	1	—
Assistance to the blind	1	82			
Aid to dependent children	1	83	1	—	1
Aid to the disabled	1	84	8	7	1
Home relief	1	85			
HEALTH					
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:					
Recipient (OAA, AB, AD, HR)	2	01	38	16	22
ADC Father	2	02			
ADC Mother	2	03			
Other ADC Grantee	2	04			
Loss of or reduction in support for child as a result of death of:					
ADC parent	2	21			
Loss of or reduction in support from other person in home as a result of:					
Death	2	31	1	1	—
Illness, injury, or other impairment	2	33	5	3	2
FAMILY					
Loss of or reduction in support for child as a result of:					
ADC parent leaving home for reason of:					
Divorce	3	22			
Separation	3	23			
Desertion	3	24			
Other (hospitalized, imprisoned, etc.)	3	25			
Other person in home leaving	3	32	2	1	1
Increased need because of:					
Addition to household	3	72			
Other reason	3	75	1	1	—
FINANCIAL					
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:					
Recipient (OAA, AB, AD, HR)	4	11	72	35	37
ADC Father	4	12			
ADC Mother	4	13			
Other ADC Grantee	4	14			
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4	34	13	4	9
Loss of or reduction in support from person outside home	4	41			
ADC Father	4	42			
Other person	4	44	8	4	4
Loss of or reduction in other income	4	53	11	1	10
Other material change in resources					
LEGAL					
Change in State law or agency policy	5	63	19	2	7
Living below agency standards	5	92	28	17	11
Other	5	95			

SIGNATURE: Betty A. James TITLE: Senior Typist DATE: 1-31-74

FORM DSS-961 (6/69) (Formerly RS-106)

MONTHLY STATIST. L REPORT ON
REASONS FOR OPENING PUBLIC ASSISTANCE CASES

STATE OF NEW YORK — DEPARTMENT OF SOCIAL SERVICES

SOCIAL SERVICES DISTRICT: Westchester County

MONTH: Dec 1973

OPENED	S.S.D.	PROGRAM	NO
1	55	1 ☐ OAA 2 ☐ ADC 3 ☒ AB 4 ☐ AD 5 ☐ HR	12
Col. 1	(2-3)	Col. 4	(5-6)

REASON FOR OPENING	State Office Code (7-9)		Cases Opened: Total Entries (10-13)	White (14-17)	Nonwhite (18-21)
			I	II	III
TOTAL	0	00	205	103	102
TRANSFERS					
Old-age assistance	1	81	1	1	—
Assistance to the blind	1	82			
Aid to dependent children	1	83	1	—	1
Aid to the disabled	1	84	8	7	1
Home relief	1	85			
HEALTH					
Loss of or reduction in earnings as a result of illness, injury, or other impairment of:					
Recipient (OAA, AB, AD, HR)	2	01	38	16	22
ADC Father	2	02			
ADC Mother	2	03			
Other ADC Grantee	2	04			
Loss of or reduction in support for child as a result of death of:					
ADC parent	2	21			
Loss of or reduction in support from other person in home as a result of:					
Death	2	31	1	1	—
Illness, injury, or other impairment	2	33	5	3	2
FAMILY					
Loss of or reduction in support for child as a result of:					
ADC parent leaving home for reason of:					
Divorce	3	22			
Separation	3	23			
Desertion	3	24			
Other (hospitalized, imprisoned, etc.)	3	25			
Other person in home leaving	3	32	2	1	1
Increased need because of:					
Addition to household	3	72			
Other reason	3	75	1	1	—
FINANCIAL					
Loss of or reduction in earnings as a result of lay-off, discharge, or reason other than health:					
Recipient (OAA, AB, AD, HR)	4	11	72	35	37
ADC Father	4	12			
ADC Mother	4	13			
Other ADC Grantee	4	14			
Loss of or reduction in support from other person in home as a result of lay-off, discharge, or reason other than health	4	34	13	4	9
Loss of or reduction in support from person outside home	4	41			
ADC Father	4	42			
Other person	4	44	8	4	4
Loss of or reduction in other income	4	53	11	1	10
Other material change in resources					
LEGAL					
Change in State law or agency policy	5	63			
Living below agency standards	5	92	19	12	7
Other	5	95	26	17	11

SIGNATURE: Betty A. Dorne TITLE: Senior Supervisor DATE: 1-31-74

BEST COPY AVAILABLE

Defendant Lavine's Statement Pursuant to Rule 9(g).

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, an infant, by his mother and next friend ROBERTA BEVERLY, ODELL BEVERLY, by his mother and next friend ROBERTA BEVERLY and JOHN BEVERLY, by his mother and next friend ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Defendant Lavine having moved for partial summary judgment and in opposition to plaintiffs' motion for summary judgment submits this statement of material facts which are not in dispute.

On March 8, 1974, in this Court the Honorable Inzer B. Wyatt, District Judge, directed the parties to submit arguments on the merits of two of plaintiffs' claims for relief (1) the constitutionality of Social Services Law § 131(10) and (2) the propriety of a class action order. In accordance with that specific limitation, defendant Lavine moved for only partial summary judgment. Plaintiffs, however moved for summary judgment on all causes of action, attacking the statute as applied, the fair hearing procedure and the availability of emergency assistance, in addition to those claims to which the Court limited them.

Plaintiffs' statement pursuant to Rule 9(g) of the General Rules of this Court is largely irrelevant to the issues before the Court and it would ill serve the interests of this Court set forth the facts in dispute which relate to issues not before it at this time.

However, there is no dispute as to material issues of fact for purposes of granting judgment on the Constitutionality of Social Services L. § 131(10).

1. New York Social Services L. provides:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person".

2. The regulation of the State Department of Social Services (18 NYCRR § 385.7) provides:

> "(a) . . . (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person".

3. The original plaintiff in this case, *Ronald Milne,* claimed that he did not voluntarily terminate his employment but was forced to resign as a security guard at Columbia University. He was denied assistance under Social Services Law § 131(10); but on or about January 9, 1974, defendant Berman reconsidered his decision and determined Milne to be eligible for assistance from the date when his application was rejected.

4. *Robert C. Lee's* employment as a machinist was terminated " 'due to a combination of excessive excused and unexcused lateness and absenteeism which proved discriminative to . . .[the] production schedule' ". He applied for and was denied assistance pursuant to Social

Defendant Lavine's Statement Pursuant to Rule 9(g).

Services L. § 131(10) by defendant Berman and his appeal was presented to defendant Lavine at a fair hearing on April 26, 1974.

6. *Douglas Streeter's* employment in a nursing home was terminated after he claimed to be sick over the New Year holiday. He had previously sought public assistance after leaving a job. He was denied assistance pursuant to Social Services L. § 131(10) by defendant Berman. A fair hearing on his appeal was held by defendant Lavine on March 20, 1974. On April 4, 1974, the decision reversing the local agency was rendered, finding Streeter eligible for assistance.

7. *Joe Nathan Beverly* lived with his three brothers in Yates County and worked for Emerson Produce Co. His brothers worked there occasionally. He voluntarily terminated his employment on January 25, 1974. Thereafter he applied for and was denied assistance pursuant to Social Services Law § 131(10) by defendant Boisvert. His brothers never applied for public assistance. On March 14, 1974 defendant Lavine held a fair hearing on Joe Beverly's appeal and on March 28, 1974, rendered his decision affirming the agency decision and finding Joe Beverly ineligible for the 75 days following January 25, 1974.

Dated: New York, New York, May 10, 1974.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
Lavine
By

AMY JUVILER
Assistant Attorney General

Answer of Defendant Lavine to Robert C. Lee's Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, an infant, by his mother and next friend ROBERTA BEVERLY, ODELL BEVERLY, by his mother and next friend ROBERTA BEVERLY and JOHN BEVERLY, by his mother and next friend ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

The defendant Abe Lavine, individually and as Commissioner of the New York State Department of Social Services for his answer to the complaint of Robert C. Lee, alleges:

FIRST DEFENSE

1. Denies that this action arises under the Constitution or statutes of the United States and denies that there has been any deprivation or threatened deprivation under color of any statute, ordinance, regulation, custom or usage of the State of New York of any rights, privileges or immunities secured to the intervenor or others similarly situated, by the Constitution or statutes of the United States.

2. The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

3. New York Social Services Law § 131(10) provides:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

4. Section 131(10) is a reasonable statute limiting eligibility for public assistance for 75 days after an applicant voluntarily leaves his employment in some instances and when not in conflict with federal law or regulation.

5. It is reasonable to require a person to provide for himself for the period immediately following his voluntarily leaving employment unless he can prove that he did not do so in contemplation of relying on public assistance.

THIRD DEFENSE

6. The regulation of the State Department of Social Services (18 NYCRR § 385.7) insofar as applicable to intervenor provides:

> "(a) . . . (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

7. The regulation ¶ 6, (*supra*) effectuates the same reasonable policy as the statute and is similarly in conformity with the Constitution of the United States.

FOURTH DEFENSE

8. Intervenor applied for public assistance in the form of Home Relief (Social Services Law § 157, *et seq.*) which by definition (Social Services Law § 158) means that he is not entitled to categorical assistance under any of the federally-aided programs.

9. Home Relief recipients are supported solely by State and local appropriations.

10. Home Relief is a program totally dependent on State law.

11. The State Legislature has the right to define eligibility for State supported Home Relief.

FIFTH DEFENSE

12. Defendant Lavine has not determined that Intervenor Lee is ineligible for public assistance for 75 days by operation of Social Services Law § 131(10).

13. State regulation (18 NYCRR Part 358) provides a "fair hearing" system by which an applicant denied assistance by local Social Services officials may ask defendant Lavine and/or his employees and agents to grant assistance.

14. Until the procedure referred to in ¶ 12 has been followed, Intervenor Lee's complaint against defendant Lavine with regard to the enforcement of Social Services Law ¶ 131(10) and 18 NYCRR § 385.7 is premature.

SIXTH DEFENSE

15. A fair hearing on Intervenor Lee's appeal from the determination of defendant Berman denying Intervenor Lee's application for home relief was held on April 26, 1974.

16. No decision on that appeal has yet been rendered.

17. At the request of defendant Berman the hearing on Intervenor's Lee's appeal had been adjourned for one month on the representation that Intervenor Lee actually was receiving assistance.

SEVENTH DEFENSE

18. Because of the many applications for fair hearings by applicants for public assistance, it is impossible for the defendant to hold hearings immediately upon request.

19. Most applicants for public assistance claim that they are presently destitute so the intervenor has no right to be considered out of turn.

20. The scheduling of fair hearings was altogether reasonable and did not deprive Intervenor Lee of any Constitutional rights.

EIGHTH DEFENSE

21. The permanent injunction issued by this Court in *William Nelson, et al.* v. *Sugarman, et al.*, 71 Civ. 1719 (CBM) on December 11, 1973, which requires the rendering of a fair hearing within 90 days of the initiation of the appeal is binding upon defendant Lavine.

NINTH DEFENSE

22. The damages sought against defendant Lavine constituted a suit against the State as prohibited by the Eleventh Amendment.

23. No actions of defendant Lavine are alleged to violate the Law of New York.

24. There are no factual allegations that defendant Lavine acted with malice against the intervenor.

TENTH DEFENSE

25. Intervenor Lee claims that he did not voluntarily terminate his employment and thus that Social Services Law § 131(10) was wrongly applied to him.

26. The Intervenor cannot represent persons who voluntarily terminated their employment since he is allegedly not a member of that class.

27. Plaintiff Milne and Intervenors Streeter and Lee all reside in Westchester County and claim to have been denied assistance by defendant Berman, his agents or employees; so that plaintiff cannot represent persons in other districts.

28. The application of Social Services Law § 131(10) must be made on an individual basis depending on the facts of each case.

29. This complaint is inappropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure.

ELEVENTH DEFENSE

30. Intervenor Lee has failed to raise a substantial question of violation of his rights under the Fourteenth Amendment to the United States Constitution.

31. Deny that this is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284.

TWELFTH DEFENSE

32. Intervenor Lee fails to state a claim for relief under 42 U.S.C. § 1983 and its jurisdictional mate 28 U.S.C. § 1343.

THIRTEENTH DEFENSE

33. Admits the allegations contained in paragraphs "9", "10", and "17" of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "5", "11", "12", "13", "14", "15", "16", and "22" of the complaint; and denies each and every other allegation contained in the complaint except admits that the texts of the law and regulation as set out respectively in paragraphs "23" and "24" of the complaint are accurate.

WHEREFORE, the complaint should be dismissed.

Dated: New York, New York, May 9, 1974.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

By AMY JUVILER
Assistant Attorney General

Answer of Defendant Lavine to Intervenors Beverlys' Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, an infant, by his mother and next friend ROBERTA BEVERLY, ODELL BEVERLY, by his mother and next friend ROBERTA BEVERLY and JOHN BEVERLY, by his mother and next friend ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

The defendant Abe Lavine, individually and as Commissioner of the New York State Department of Social Serv-

ices for his answer to the complaint of the intervenors Beverly, alleges:

FIRST DEFENSE

1. Denies that this action arises under the Constitution or statutes of the United States and denies that there has been any deprivation or threatened deprivation under color of any statute, ordinance, regulation, custom or usage of the State of New York of any rights, privileges or immunities secured to the intervenors or others similarly situated, by the Constitution or statutes of the United States.

2. The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

3. New York Social Services Law § 131(10) provides:

"Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose

of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

4. Section 131(10) is a reasonable statute limiting eligibility for public assistance for 75 days after an applicant voluntarily leaves his employment in some instances and when not in conflict with federal law or regulation.

5. It is reasonable to require a person to provide for himself for the period immediately following his voluntarily leaving employment unless he can prove that he did not do so in contemplation of relying on public assistance.

THIRD DEFENSE

6. The regulation of the State Department of Social Services (18 NYCRR § 385.7) insofar as applicable to intervenors provides:

"(a) . . . (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person."

7. The regulation (¶ 6, *supra*) effectuates the same reasonable policy as the statute and is similarly in conformity with the Constitution of the United States.

FOURTH DEFENSE

8. Intervenor applied for public assistance in the form of Home Relief (Social Services Law § 157, *et seq.*) which by definition (Social Services Law § 158) means that he is not entitled to categorical assistance under any of the federally-aided programs.

9. Home Relief recipients are supported solely by State and local appropriations.

10. Home Relief is a program totally dependent on State law.

11. The State Legislature has the right to define eligibility for State supported Home Relief.

FIFTH DEFENSE

12. Defendant Lavine has determined that Intervenor Joe Nathan Beverly is ineligible for public assistance for 75 days by operation of Social Services Law § 131(10).

13. On March 14, 1974, a fair hearing was held at Canandaigua, New York before William Gorton, Hearing Officer for defendant Lavine on Intervenor Joe Nathan Beverly's appeal from the determination of defendant Boisvert denying Intervenor Joe Nathan Beverly's application for home relief. A copy of the transcript of that hearing was submitted as Exhibit "E" with defendant Lavine's motion for summary judgment.

Answer of Defendant Lavine to Intervenors Beverlys' Complaint.

14. On March 28, 1974, defendant Lavine rendered his decision affirming the determination of intervenor-defendant Boisvert that Intervenor Joe Nathan Beverly had terminated his employment for the purpose of qualifying for home relief. A copy of that decision was attached as Exhibit "D" to defendant Lavine's notice of motion for summary judgment.

15. Defendant Lavine's determination of Intervenor Joe Nathan Beverly's appeal was based on the evidence before him and was altogether proper and lawful.

SIXTH DEFENSE

16. Review of defendant Lavine's determination may be obtained pursuant to Article 78 of the CPLR.

17. The decision of defendant Lavine is *res judicata* as to the factual determination made after the fair hearing.

SEVENTH DEFENSE

18. Intervenors Willie, Odell and John Beverly never applied for home relief as alleged in their complaint. This they admitted at the fair hearing referred to in ¶ 13, *supra* (Exhibit "E", pp. 15-16).

19. Denies that he has taken any action or been requested to take any action whatsoever with regarding public assistance for Intervenors Willie, Odell and John Beverly.

Answer of Defendant Lavine to Intervenors Beverlys' Complaint.

EIGHTH DEFENSE

20. Intervenor Joe Nathan Beverly requested a fair hearing on February 26, 1974 and it was held on March 14, 1974.

21. Because of the many applications for fair hearings by applicants for public assistance, it is impossible for the defendant to hold hearings immediately upon request.

22. Most applicants for public assistance claim that they are presently destitute so the intervenor has no right to be considered out of turn.

23. The scheduling of fair hearings was altogether reasonable and did not deprive Intervenor Joe Nathan Beverly of any Constitutional rights.

NINTH DEFENSE

24. The damages sought against defendant Lavine constitute a suit against the State as prohibited by the Eleventh Amendment.

25. No actions of defendant Lavine are alleged to violate the Law of New York.

26. There are no factual allegations that defendant Lavine acted with malice against the intervenors.

TENTH DEFENSE

27. Intervenor Joe Nathan Beverly claims that he terminated his employment because he was evicted from his residence.

28. Intervenor Joe Nathan Beverly cannot represent persons who voluntarily terminated their employment for other reasons since he is not a member of that class.

29. The application of Social Services Law § 131(10) must be made on an individual basis depending on the facts of each case.

30. This complaint is inappropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure.

ELEVENTH DEFENSE

31. Intervenor Beverly has failed to raise a substantial question of violation of his rights under the Fourteenth Amendment to the United States Constitution.

32. Deny that this is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284.

TWELFTH DEFENSE

33. Intervenor Beverly fails to state a claim for relief under 42 U.S.C. § 1983 and its jurisdictional mate 28 U.S.C. § 1343.

THIRTEENTH DEFENSE

34. Admits to the allegations contained in paragraphs "12", "13" and "14" of the complaint; alleges that he is without knowledge and information to form a belief as to the truth of the allegations contained in paragraphs "5", "6", "7", "8", "16", "17", "20", "21" "22", "23",

"24', "25", "26", "27", "28" "29", "30", "31", "32" and "36" of the complaint; and denies each and every other allegation contained in the complaint except admits that defendant Lavine has found that Intervenor Joe Nathan Beverly voluntarily terminated his employment for the purpose of obtaining home relief and, under Social Services Law § 131(10), was disqualified from receiving home relief for seventy-five days thereafter; and admits that Joe Nathan Beverly was employed at $2.00 an hour as a farmworker for Emerson Produce Co. in Rushville, Yates County, New York until January 25, 1974 and admits that the texts of the law and regulation as set out respectively in paragraphs "33" and "34" of the complaint are accurate.

WHEREFORE, the complaint should be dismissed.

Dated: New York, New York, May 9, 1974.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

By AMY JUVILER
Assistant Attorney General

Answer of Defendant Lavine to D. Streeter's Complaint.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, an infant, by his mother and next friend ROBERTA BEVERLY, ODELL BEVERLY, by his mother and next friend ROBERTA BEVERLY and JOHN BEVERLY, by his mother and next friend ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Answer of Defendant Lavine to D. Streeter's Complaint.

The defendant Abe Lavine, individually and as Commissioner of the New York State Department of Social Services for his answer to the complaint of Douglas Streeter, alleges:

FIRST DEFENSE

1. Denies that this action arises under the Constitution or statutes of the United States and denies that there has been any deprivation or threatened deprivation under color of any statute, ordinance, regulation, custom or usage of the State of New York of any rights, privileges or immunities secured to the plaintiff or others similarly situated, by the Constitution or statutes of the United States.

2. The complaint fails to state a claim upon which relief can be granted.

SECOND DEFENSE

3. New York Social Services Law § 131(10) provides:

"Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily ter-

minated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

4. Section 131(10) is a reasonable statute limiting eligibility for public assistance for 75 days after an applicant voluntarily leaves his employment in some instances and when not in conflict with federal law or regulation.

5. It is reasonable to require a person to provide for himself for the period immediately following his voluntarily leaving employment unless he can prove that he did not do so in contemplation of relying on public assistance.

THIRD DEFENSE

6. The regulation of the State Department of Social Services (18 NYCRR § 385.7) insofar as applicable to intervenor provides:

"(a) . . . (ii) an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applied for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in

the absence of evidence to the contrary supplied by such person."

7. The regulation (¶ 6, *supra*) effectuates the same reasonable policy as the statute and is similarly in conformity with the Constitution of the United States.

FOURTH DEFENSE

8. Intervenor applied for public assistance in the form of Home Relief (Social Services § 157, *et seq.*) which by definition (Social Services Law § 158) means that he is not entitled to categorical assistance under any of the federally-aided programs.

9. Home Relief recipients are supported solely by State and local appropriations.

10. Home Relief is a program totally dependent on State law.

11. The State Legislature has the right to define eligibility for State supported Home Relief.

FIFTH DEFENSE

12. Defendant Lavine has determined that Intervenor Streeter is not ineligible for public assistance for 75 days by operation of Social Services Law § 131(10).

13. A fair hearing was held at White Plains, New York on March 20, 1974, before Thomas J. Mahoney, Hearing Officer for defendant Lavine on Intervenor Streeter's appeal from the determination of defendant Berman denying Intervenor Streeter's application for home relief.

14. On April 4, 1974, defendant Lavine rendered his decision overruling the determination of defendant Berman that defendant Streeter was not eligible for home relief for 75 days after termination of employment by operation of Social Services Law § 131(10).

15. A copy of the fair hearing decision of defendant Lavine is appended to his motion for summary judgment as Exhibit "C".

SIXTH DEFENSE

16. Because defendant Lavine has determined that Social Services Law § 131(10) does not apply to Intervenor Streeter, his complaint is moot.

SEVENTH DEFENSE

17. Upon information and belief, Intervenor Streeter requested a hearing on January 28, 1974 and one was scheduled for February 28, 1974.

18. At the request of defendant Berman, the hearing was adjourned until March 20, 1974 on the representation that Intervenor Streeter actually was receiving assistance.

19. Because of the many applications for fair hearings by applicants for public assistance, it is impossible for the defendant to hold hearings immediately upon request.

20. Most applicants for public assistance claim that they are presently destitute so the intervenor has no right to be considered out of turn.

21. The scheduling of fair hearings was altogether reasonable and did not deprive Intervenor Streeter of any Constitutional rights.

EIGHTH DEFENSE

22. The permanent injunction issued by this Court in *William Nelson, et al.* v. *Sugarman, et al.*, 71 Civ. 1719 (CBM) on December 11, 1973 which requires the rendering of a fair hearing within 90 days of the initiation of the appeal is binding upon defendant Lavine.

NINTH DEFENSE

23. The damages sought against defendant Lavine constitute a suit against the State as prohibited by the Eleventh Amendment.

24. No actions of defendant Lavine are alleged to violate the Law of New York.

25. There are no factual allegations that defendant Lavine acted with malice against the intervenor.

TENTH DEFENSE

26. Intervenor Streeter claims and defendant Lavine has found that Intervenor Streeter did not voluntarily terminate his employment and thus that Social Services Law § 131(10) was wrongly applied to him.

27. Intervenor Streeter cannot represent persons who voluntarily terminated their employment since he is allegedly not a member of that class.

28. Plaintiff Milne and Intervenors Streeter and Lee all reside in Westchester County and claim to have been denied assistance by defendant Berman, his agents or employees; so that plaintiff cannot represent persons in other districts.

29. The application of Social Services Law § 131(10) must be made on an individual basis depending on the facts of each case.

30. This complaint is inappropriate for class action treatment pursuant to Rule 23 of the Federal Rules of Civil Procedure.

ELEVENTH DEFENSE

31. Intervenor Streeter has failed to raise a substantial question of violation of his rights under the Fourteenth Amendment to the United States Constitution.

32. Deny that this is a proper case for determination by a three-judge court pursuant to 28 U.S.C. §§ 2281, 2284.

TWELFTH DEFENSE

33. Intervenor Streeter fails to state a claim for relief under 42 U.S.C. § 1983 and its jurisdictional mate 28 U.S.C. § 1343.

THIRTEENTH DEFENSE

34. Admits the allegations contained in paragraphs "9", "10", "22", "28", and "29" of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in

paragraphs "5", "11", "12", "13", "14", "15", "16", "17", "18" and "20" of the complaint; and denies each and every other allegation contained in the complaint except admits that defendant Lavine found after a fair hearing that Intervenor Streeter was terminated from his employment on January 2, 1974 for failing to report to work on December 31, 1973 when he was ill and admits that the texts of the law and regulation as set out respectively in paragraphs "23" and "24" of the complaint are accurate.

WHEREFORE, the complaint should be dismissed.

Dated: New York, New York
May 8, 1974

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

By AMY JUVILER
AMY JUVILER
Assistant Attorney General

Hearing Before the Three-Judge Court, May 10, 1974.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, etc.,

Plaintiffs,

v.

LEONARD BERMAN, etc.,

Defendants.

New York, New York
May 10, 1974

Before:

HON. JAMES L. OAKES, Circuit Judge

HON. DUDLEY B. BONSAL, District Judge

HON. INZER B. WYATT, District Judge.

Appearances:

Gerald Norlander, Esq.,
Martin Schwartz, Esq.,
for the Plaintiffs.

Amy Juviler, Esq.,
Richard A. McAtamney, Esq.,
Peter F. Davidson,
Harrison S. Downs, Esq.,
for the Defendants.

Judge Oakes: How much time do you think you will need on behalf of the plaintiffs, Mr. Norlander?

Mr. Norlander: About twenty minutes, your Honor.

Judge Oakes: And Mrs. Juviler?

Ms. Juviler: I would like to reserve twenty minutes at this time, your Honor.

Judge Oakes: Very well. You may proceed.

Mr. Norlander: May it please the Court, I am Gerald A. Norlander of the Legal Aid Society of Westchester County, attorneys for the plaintiffs in this civil rights action brought pursuant to 42 USC 1983, where the plaintiffs seek injunctive and declaratory relief from the application of a New York Welfare statute, Section 13110, of the New York Social Services Law. That law creates a rebuttable presumption that the plaintiffs left their employment for the purpose of obtaining public assistance.

The result of the application of the presumption is that the plaintiffs were disqualified from receiving assistance for 75 days, without regard to the need or present willingness to work.

At the outset, the plaintiffs wish to make it clear—

Judge Wyatt: Excuse me. Tell me again, to whom does the presumption apply.

Mr. Norlander: The presumption applies to persons who have voluntarily left their employment within the 75 days preceding their application for assistance.

Judge Wyatt: So, anybody who applies within 75 days of the cessation of employment is presumed to have left employment voluntarily; is that it?

Mr. Norlander: Not quite, your Honor. Anybody who voluntarily left his employment within 75 days before applying is presumed to have left his employment in order to receive assistance, for the purpose—

Judge Wyatt: So, the fact to be determined is whether the leaving of the employment was voluntary?

Mr. Norlander: No. That is a given fact. The fact to be determined is that the statute presumes that the person voluntarily left for a particular reason, a wrongful reason—that is, the reason to obtain public assistance and so it is given that the defendants have found that the plaintiffs voluntarily quit their employment.

The statute presumes that they quit for the reason of obtaining public assistance.

Judge Wyatt: But how do you determine whether the person was fired or left voluntarily?

Mr. Norlander: That is a question of fact ordinarily determined by the defendants and, in Mr. Milne's case, he resigned.

Judge Wyatt: You mean in administrative proceedings?

Mr. Norlander: Yes.

Plaintiffs' first contention is that this presumption is unconstitutional on its face because it is irrational. The Supreme Court has set forth a standard for evaluating rebuttable presumptions. That standard is that the known fact of the presumption must lead to, must be rationally connected with the presumed fact and, so, in evaluating a presumption the Court has looked to see what the facts actually are.

In this case, we must examine the question of the likelihood that plaintiffs would leave their employment for the purpose of obtaining public assistance. If it is unlikely that the plaintiffs would leave their employment in order to obtain public assistance, the statute or the presumption becomes irrational and arbitrary and cannot stand.

Looking at the Home Relief Program, which the plaintiffs were all applicants for, we have to take a look at the benefits that are available to that person in order to determine whether it is likely that anyone would want to quit his job to get them.

For a single individual, the program offers $84 a month plus rent. We submit that on that point alone it is rather

unlikely that anyone would quit his work to obtain that kind of benefit.

Secondly, the person must liquidate all his assets, available assets—cars, houses and the kind of material extras that ordinary people in our society work to obtain.

Furthermore, as a condition of receiving assistance, even before receiving a single grant a person must go to a Labor Department office and report for work. If there is work available and the person refuses it, he will be denied assistance.

The plaintiffs do not challenge that portion of the New York Work Law. We concede readily that home relief benefits may be conditioned upon a work test.

Finally, as a requirement of continued receipt of benefits, a person must report every two weeks at a Labor Department office for work.

Therefore, looking at the program itself, it is very, very unlikely that the plaintiffs would give up a job and pauperize themselves deliberately in order to qualify for a program that has very stringent work requirements.

Furthermore, the Supreme Court has indicated that where authoritative studies are available and government reports are available, we should look to those reports to determine whether or not general experience really backs up a statutory presumption.

In this case, there are many government reports on the relationship between work and welfare and there are also reports and statistics available on the reasons why people quit work. All these studies, research findings and government reports support the plaintiffs' contention that it is very, very unlikely that the plaintiff class would actually leave work in order to obtain welfare benefits.

The conclusions of these studies are practically uniform. Poor people are working; poor people do work; welfare recipients want to work, they don't want to be on welfare.

People leave their jobs for reasons that are not related to the availability of public assistance.

The defendants have not provided any substantial studies, reports, statistics or any other findings that would support the factual underpinnings for this presumption and, in fact, the legislature in enacting this law indicated that it was designed to avoid any potential incentive for persons to leave their work.

Judge Bonsal: Did the legislature have any of these statistics before them when they passed this section?

Mr. Norlander: The legislative history does not reveal so, your Honor. The memorandum submitted by the Executive Department indicated it was designed to foreclose the possibility of a potential incentive to leave work. There was no finding that there was an actual incentive, monetary incentive, and there was no finding that people succumbed to such an incentive, if it existed. In fact, an acting commissioner of the New York State Department of Social Services has testified, through a committee of the United States Congress, that the level of benefits available in New York's Public Assistance programs is not likely to induce people to leave their work.

Judge Oakes: What about the shelter allowance? Does that automatically apply so as to increase home relief?

Mr. Norlander: Yes. In the ordinary case, it does, up to a scheduled limit. So, if a person had $100 rent, the monthly grant would be $184 but the stipend available for all daily needs still would be less than $3.00 a day and that would be generally true for all home relief recipients.

Judge Oakes: What do you say as to whether New York might have adopted a statute not following this presumption at all but simply saying that no one shall be entitled to home relief for 75 days after employment has been terminated? Would such a statute be unconstitutional?

Mr. Norlander: That question, although not before the Court, would seem to raise a substantial equal protection

problem; but, applying the test that the Supreme Court has announced in this area, it would have to be a rational connection between the requirement and the purpose of the law.

The purpose of the law is to provide aid to needy people and so, such an exclusion might be arbitrary.

Furthermore, that could only apply in the home relief category since the federal Social Security Act would bar any such treatment.

Judge Oakes: I understand that.

Mr. Norlander: To make it clear, our position, we don't object, the plaintiffs do not object, to an inquiry about why they left their jobs. In fact, it is a very relevant inquiry because it may be decided by disability, it may be that the person is qualified for unemployment benefits or some other program of assistance that the welfare department could refer the plaintiffs to.

We don't object to being asked why did the person quit his job. What is objected to is that the State presumes the answer that it was for a wrongful reason and, on that score, we contend that the statute—

Judge Bonsal: This is a rebuttable presumption, I take it, but your point is that the process of rebutting the presumption still denies you what you are entitled to; is that right?

Mr. Norlander: Your Honor, the plaintiffs also contend that as applied in operation, this presumption violates the due process clause.

Judge Bonsal: That is what I was going to ask. Supposing I was fired here and I went around tomorrow morning to obtain relief. What would happen to me? I fill out an application? Do you know?

Mr. Norlander: If you were fired, strictly speaking the law would not apply unless—

Judge Bonsal: But the presumption is there and I arrive tomorrow morning and there is the presumption in

the 75 days. Do you know what they do with me? I suppose I should ask the State.

Mr. Norlander: Well, the record is fairly clear. An individual would be referred to the Labor Department office, perhaps, and an investigation would be made as to the circumstances of employment termination. If it were determined that the person voluntarily left his employment, the sanction would be imposed on that day.

Judge Bonsal: That would be the day you made your application.

Mr. Norlander: Yes, your Honor, and so, the plaintiffs contend that the presumption in fact and in operation is not rebuttable but is conclusive.

Judge Wyatt: And the sanction is denial of assistance for 75 days?

Mr. Norlander: That is correct, your Honor.

Judge Bonsal: Well, as I understood your brief, here, I could ask for a fair hearing, couldn't I, on the next day if they said "you can't have home relief for 75 days"? I could ask for a fair hearing on that?

Mr. Norlander: Yes, your Honor, but the fair hearings are not required to be decided and implemented except within 90 days after a request is made.

Judge Bonsal: Does it ever happen that they might agree on the first day, "yes; you were fired so it doesn't apply and you can obtain relief"?

Mr. Norlander: Well, strictly speaking, your Honor, the presumption should not be invoked if a person did not voluntarily quit, so the problem is that, and the record reveals, that mistaken application of the law is common if not the norm and a person who has the law mistakenly applied to him nonetheless suffers the sanction, the forfeiture of benefits for 75 days.

Judge Oakes: Explain what you mean by that. Are you saying that in this case most of the plaintiffs in effect were not really voluntarily terminated?

Mr. Norlander: Plaintiff Milne resigned from the employment.

Judge Oakes: Most of the rest, the fellow who resigns under the threat of being fired, that is hardly voluntarily, it seems to me.

Mr. Norlander: Again, the defendants are the persons who determine the voluntariness and it is ordinarily an administrative fact-finding procedure to determine whether the person voluntarily quit. In labor law and generally in New York State law it is possible for a person to provoke his own discharge and, therefore, voluntarily quit employment.

Plaintiffs contend that really, the issue is not the voluntariness. The question is the application of the presumption and the imposition of the sanction.

Judge Oakes: That determination in any event is made by the social worker, case worker, presumably, at the time of the first application for relief?

Mr. Norlander: That's right. Plaintiffs have called to the attention of the Court and to opposing counsel a recent case, Owens against Roberts, in which a three-judge Court held unconstitutional a very similar Florida welfare statute. That statute also created a rebuttable presumption of a wrongful motive to qualify for public assistance.

The facts in this case involved the transfer of an asset prior to the application. That also resulted in a disqualification.

The Court in Owens against Roberts held, on several grounds, that the statute was unconstitutional and plaintiffs contend that this Court should also adopt the reasoning that was followed in the Owens case because the statute here is likewise irrational on its face. Also, the Owens case dealt with the conclusive operation of the statute.

It is inseparable, we believe, to consider the constitutionality of the statute without looking at how it really operates. The Supreme Court has indicated in all the cases

that we look beyond the form, beyond the rebuttable to determine if it actually deprives a person of the fair chance to show that the presumption does not hold true.

The Owens case also held that in operation, because people were denied the meaningful opportunity to rebut the presumption, that the presumption violated the due process clause.

Plaintiffs' third contention is that the procedural mechanism that plaintiffs are saddled with discriminates against them in violation of the equal protection clause.

Again, we wish to distinguish and to narrow the claim here. It is not that the plaintiffs contend that a person who really quit work to get welfare could not be denied. Plaintiffs contend, rather, that it is the procedural burden, the procedural mechanism that has been arbitrarily imposed upon them.

The Supreme Court has indicated that onerous procedural mechanisms cannot be arbitrarily imposed.

Here we have a situation where a panhandler could—one who has not worked at all for years, months—walk into the Department and apply, totally free of the presumption and procedural mechanism that the plaintiffs are burdened with. On the other hand, the plaintiffs are persons who have demonstrated an attachment to the labor force; they might have left their work for any number of reasons and there might be any number of intervening reasons why they became destitute within the past two and a half months and, therefore, we contend that the procedural mechanism itself is in violation of equal protection and the Court in Owens against Roberts found equal protection violation.

The defendants' major contention appears to be that it is convenient for them to presume wrongdoing. Now, the government may find it more convenient to presume wrongdoing in a situation like this but the Supreme Court has always rejected this convenience argument and the argument was rejected in the Owens case.

Again, we are not asking the Court to foreclose inquiry into the reasons of past employment termination. We are asking that the State not be allowed to presume wrongful conduct tantamount to fraud on the part of the plaintiffs.

Judge Wyatt: Tell me, because I never was quite sure during our preliminary discussions, if public assistance is denied because of the application of this statute and if the applicant is destitute, has nothing—we have sometimes used this expression, emergency public assistance.

Do I understand that during the 75 day period there is something available that will keep the applicant from starvation?

Mr. Norlander: There is nothing available from the defendants, your Honor. Their answers to the interrogatories show that emergency assistance or temporary assistance cannot be provided after there has been a determination of ineligibility so that the notices that the plaintiffs receive foreclose them from further receipt or any possible receipt of emergency assistance.

The emergency assistance regulations that do exist would apply to a person who was in obvious need but they had not had time to evaluate his application and in practice it is very rarely given at that stage and once the notice comes out, once the disqualification is made, that is a determination of eligibility and a bar to giving assistance.

Judge Oakes: Do you seriously press your class action aspects of this?

Mr. Norlander: Yes, your Honor.

Judge Oakes: What do you gain by it if you prevail?

Mr. Norlander: Well, first of all, your Honor, the injunctive relief would run to all members of the class.

Judge Bonsal: Who would be the class?

Mr. Norlander: The class would be all persons, all needy persons who have had or who may apply for assistance within 75 days of their termination of employment

and, in the Owens against Roberts case, class action was granted in the situation practically identical to this one.

Judge Bonsal: What difference does it make?

Mr. Norlander: Plaintiffs respectfully contend that the force of an injunction is necessary here to grant full relief to the plaintiff class. In the recent case in the Southern District here, Judge Gurfein rendered a declaratory judgment concerning the invalidity of a state welfare regulation and subsequently, a second action had to be brought because the effect of stare decisis did not deter the defendants from continuing to enforce that particular regulation. The first case before Judge Gurfein was Doe against Lavine and the second case, unreported, is Lewis against Lavine and we can submit that to the Court, if it desires.

Judge Oakes: It might a good idea. I can see it happening in cases sometimes in municipalities but to have the State of New York do something like that would astonish me.

Mr. Norlander: Yes. Judge Brieant directly dealt with this issue and stated that Judge Gurfein's confidence that the State would abide by the decision was illusory.

Furthermore, Rule 23—

Judge Wyatt: But this is a three-judge Court and Judge Gurfein was only one judge and it is hard, I am sure, for Judge Oakes to think that if we were to hold the statute unconstitutional that the State of New York would continue to enforce it. It doesn't seem reasonable.

Mr. Norlander: Rule 23, your Honors, and especially actions brought under Rule 23(b)(2) have, according to the advisory notes and much authority in this area, have suggested that this kind of action is peculiarly suited to class action treatment and the force of an injunction which might be necessary to achieve the compliance by the thousands of social service employees that administer these laws.

Judge Oakes: Well, if there were any real doubt about it, I could see your point but, we will take your point

under advisement and I think you should submit what you have in that regard.

Mr. Norlander: Thank you, your Honor.

Ms. Juviler: Your Honors, everyone is talking about class action. Let me discuss the few procedural points that I want to make here.

As we pointed out in our brief, the major objection to class action relief here is the diversity of the fact situations that will arise and the difficulty in really knowing whether a given human being is a member of that class or not. The difficulty of designation, definition, that is.

I think that Judge Wyatt's point is very well taken. The problem with compliance with declaratory relief is the jurisdiction of the one judge who cannot enjoin but can only declare that—this is a paradox right here, in a procedural chaos, under the Mitchell versus Donovan case. All of this is not relevant here because—

Judge Oakes: Well, if we declared this statute unconstitutional, the statutory presumption, regardless of who has a different case, how would the State enforce it against somebody? Against whom could you enforce it?

Ms. Juviler: It couldn't be enforced. Of course, let us assume for the moment that even if the State were willing to do so by a declaration, a declaration by a Court with jurisdiction to enjoin, the plenary power of 28 USC 2202 would come into force and therefore the merit would not have to be determined again prior to issuing an injunction to enforce the declaration.

It still would be difficult. You would have to determine in a case of enforcement under 28 USC 2202 whether this person in fact was affected by the statute and that might be a complicated determination in a given case.

Judge Oakes: What would be complicated about it?

Ms. Juviler: Well, one thing, it would have to be the State holding that the person was ineligible. There is only one of the many people who come before this Court that

the State has held that they were ineligible under 131-10 and that was the Beverly Brothers or Joe and Nathan Beverly—the Beverly Brothers. The others have not been determined to have had the statute properly applied to them.

Judge Oakes: Well, they have been initially determined.

Ms. Juviler: Yes, and of course, the local agencies, the likelihood that a declaration from a three-judge Court, I know of no case where that is so. We have been making a lot of motions before one judge, asking that declarations be put before a three-judge Court and this is the only welfare case.

I had a case last Friday in the Eastern District, involving a case against a judge, begging the Court to please convene three judges so that the judge would be put in a position of having to obey a mandatory State statute or to take the advisory declaration of a single equal district judge, so that I think the problem of the issuance of a declaratory relief, rather than injunction, is not a great problem with regard to the three-judge Court. But, that is the problem.

However, we won't dwell on that because to us, the difference between it being a class action and an individual action is slight. It is really the convenience of the Court and fairness to the people who are actually not given notice of litigation.

Judge Bonsal: I don't think it still answers Judge Oakes' question. If this Court should, and I don't say we will necessarily but, if we should determine that this section is unconstitutional and enjoin the State from following it, you would follow through, I take it; there would be no further problems.

Ms. Juviler: Yes, to the extent that I, as counsel, would advise my client that a declaration was forceful and because of the size of the department and the individual

discretion in the local agencies, I hate to say for sure but I certainly would write a memorandum saying—

Judge Bonsal: The point is, you would say that only applies to Milne and it would not apply to somebody else? Would you say that?

Ms. Juviler: No, your Honor.

Judge Bonsal: Regardless of whether it was a class?

Ms. Juviler: No question. If the issue is the constitutionality of the statute, then there is no question that the declaration would apply to everyone.

Judge Oakes: What you have just said concerns me. I had thought that there was no problem at all but what you have just said indicates to me that you might very well have individual workers holding this as a threat or using the statute, if we did declare it unconstitutional, and your little memorandum might never see the light of day unless we declared it.

Ms. Juviler: Whenever you represent an agency as big as the one I represent here today, that is a possibility but it doesn't mean that—it would be contemptuous, if it was enjoined and we do not countenance the thought and it would be followed up by an administrative letter and the likelihood of it happening is slight.

The only thing I wanted to say was that that original application statement, most of these cases came in—I cannot guarantee that the State's view, the State Department's view is automatically carried out but that is true whether statutes are declared invalid or whether we are dealing with the question of whether they are followed. But, we have no intention of disobeying orders.

Judge Wyatt: What you are saying is whether it is a class action or not, if this Court would say the statute was unconstitutional, as far as the defendants in this action are concerned, they would follow it until our decision was reversed?

Ms. Juviler: That is correct.

Judge Wyatt: And all you are saying is that somebody in the field might not follow it but, if you learned about it administratively, the State would correct it.

Ms. Juviler: Correct. Now, I wanted to make my understanding of the oral directions of this Court on March 8, 1974, clear and that is, there are two major issues raised by plaintiffs that I did not deal with in the memorandum because I believed I was directed not to do that before this Court and that is the speed with which hearings are ordered.

The availability of the hearings themselves are statutory and therefore before the Court but the practice of the speed with which hearings are ordered and the availability of emergency assistance, I am perfectly happy to discuss those facts as a practical matter but I have not put in a defense, legally, and I understood that was because there was a question as to whether that would be presented to the three-judge Court.

Judge Oakes: It seems to be involved at this point. I would think that you might well answer it.

Ms. Juviler: Well, we were told that we should only defend the statute on its face, your Honor, and I meticulously moved for a partial summary judgment on the basis of those directions. It was not because we were trying to avoid the litigation of those issues but we understood that was the direction of the Court.

We would be happy to move for total judgment on the issues.

At this point let me just state that we are mandated under an order in Nelson versus Sugarman, which we referred to in the brief, to hold hearings within 90 days—in our answer is where Nelson is referred to—within 90 days, pursuant to an order of this Court.

Every month a report is submitted and I will be happy to give the reports to the Court. The class defined in

Nelson—which may illustrate for all of us the pitfalls of class actions where they are not necessary—the class was defined as all New York City recipients, applicants for public assistance or persons who had been receiving public assistance who had applied for fair hearings and whose aid was not continuing.

That means the people who were not affected by Goldberg versus Kelly; that they were able to get assistance pending the final decision in the fair hearing. That includes mostly people who are new applicants for assistance. They do not get assistance pending the determination of the fair hearing, and this was limited to New York City.

The relief ordered by the District Court in Nelson versus Sugarman said that all cases within the entire state had to meet the requirements as set forth by the Court and we therefore complied.

Nobody went back and said, "Oh, but your class is not quite properly described here," and as a result of that we are bound by Nelson versus Sugarman and the issues of the speed with which fair hearings were held, where people who are applying for assistance and said to be destitute were all presented in that Court and relief was granted.

It is a possibility that we are not being put into jeopardy of a contrary decision and a relitigation in the very same Court because the class was misdefined. But assuming that the class was redefined by nature of the order, then this is res judicata and that is what happens in a class action.

The second issue is the availability of emergency assistance: More properly stated, that when an applicant for assistance who might fall within this category ultimately applies, he is eligible for emergency assistance. That is money to pay the rent and provide him food until the application has been ruled upon by the local agencies —that is, whether he is found to be eligible for assistance or is ineligible.

If this applicant is found to be ineligible, he then is no longer eligible for emergency assistance. That is the determination of the department.

Contrary decisions have come down from local state Courts and—

Judge Bonsal: Maybe you can answer my question which I asked the other side: I am fired here and now I come to one of your offices tomorrow morning and I want sustenance, subsistence, relief. What happens now?

Ms. Juviler: You then fill out a form explaining not only your current resources as stated by you but one of the basic proofs, even if it weren't home relief category, would be your prior employment; you would have to give the social security card so they could check whether you were currently employed.

Judge Bonsal: And I tell them I was fired just yesterday.

Ms. Juviler: Right. At that point, you would be referred to the Department of Labor for employment interview and your present resources are very key. I mean, if you have—

Judge Bonsal: Assume I have no resources.

Ms. Juviler: You would then be eligible for public assistance, no question about it, because this statute does not apply if you did not voluntarily terminate your employment.

Judge Bonsal: In other words, nobody would say to me "we have got to check this for 75 days". If I said I was fired, I wouldn't be in this category at all; is that correct?

Ms. Juviler: That's correct. You would have to give the basis for your firing.

Judge Bonsal: Even though there is a presumption.

Ms. Juviler: Of course the first thing they do is send you to Unemployment Insurance and you say "they say

that I provoked my own discharge" and they would then have to determine that before giving you public assistance but the typical person who is fired does not go to the Welfare Department and, indeed, I think you can see from the fact situations alleged here, almost all of these people first went to Unemployment Insurance.

Judge Wyatt: You mean if they get unemployment insurance, then the problem is solved; they don't then ask for public assistance?

Ms. Juviler: Probably. It is possible that your unemployment insurance will be less than your eligibility for assistance. In that case, you can get a supplementary grant. But, we are dealing here exclusively with people who, for that time being—now, as I understand it, Mr. Milne was then found to be eligible for unemployment insurance but he originally was found—I am being a little bit confusing; sorry.

Mr. Milne originally was found ineligible for unemployment insurance on the grounds that he had voluntarily terminated his employment. He then applied for public assistance. They said "you voluntarily terminated your employment for the purpose of obtaining public assistance".

He applied for a fair hearing both from Unemployment Insurance and from the Department of Social Services. In the meantime, Mr. McAtamney reconsidered on the basis of the facts presented to him and defendant, Berman, accepted the evidence as given by Milne, that he did not voluntarily terminate his employment for the purposes of obtaining public assistance and he was put on the welfare rolls.

Thereafter, his hearing came up in the course of time before the Labor Department and they found that he had not voluntarily terminated his employment and that he was eligible for unemployment insurance and Milne said that

he returned the public assistance checks and then started receiving unemployment insurance checks.

So, there is a relationship, as a practical matter. There is a substantial relationship between, in the ending of jobs, unemployment insurance and public assistance.

Many people who lose jobs for one reason or another end up on public assistance but there usually is a period of time, and right now it is a very substantial period of time, when they can obtain unemployment insurance. Both Public Assistance and Unemployment Insurance now require that people maintain themselves as ready and able to work as a condition. That did not exist as a requirement in the past but in the Seventy amendments that are issued here, the work rules went into effect which require all able-bodied people to work rather than to get assistance.

Judge Bonsal: Is there any presumption in the Unemployment Insurance laws?

Ms. Juviler: If you voluntarily terminate your employment?

Judge Bonsal: Is there any presumption that you voluntarily terminated or does the Unemployment Insurance law say that if you leave your employment for any reason other than voluntariness you are entitled to unemployment insurance?

Ms. Juviler: I have read the statute, your Honor, but not extremely recently. I believe there is no statutory presumption. However, that is our contention with regard to this statute as I described.

Judge Oakes: You better get to it.

Ms. Juviler: Yes. The first thing I wanted to emphasize is that these are home relief cases and the limit of this Court's jurisdiction is the constitution because, as far as federal policy is concerned, these people are able-bodied and must be self-sufficient or the subject of private charities or the State charities, if the State so desires, but they are not eligible for any federally aided programs.

That puts this case in a different place than most of the other welfare cases that your Honors have ruled upon in the past because we are not here concerned with HEW regulations or the federal statute.

The distinction between people who do not have to care for children and who are blind and disabled, and people involved in this case, those who do not have those disabilities, is very extreme in the federal statute—much more extreme than any distinctions that are attacked here.

This, as Mr. Norlander has stated, is an eligibility requirement—the statute that is at issue here, 131-10. To be eligible for home relief one has to have resources less than the standard of need applicable in the State at the time; that is, if your rent is actually paid plus $84 for single people—

Judge Wyatt: Solely by the State?

Ms. Juviler: Yes.

Judge Wyatt: Nothing whatever to do with the federal government?

Ms. Juviler: Nothing whatever. Now, the State, in order not to put a deterrent on family unions, to avoid family breakup, the State of New York has treated home relief recipients and AFDC recipients the same but the funding of that is not the same. They cannot be eligible for any of the federal categories. So, anybody who ends up with home relief is, by definition, not blind or caring for children.

The next requirement is the requirement at issue here. If they had been employed within the last 75 days they may not have voluntarily terminated that employment for the purpose of obtaining public assistance.

This is an eligibility requirement. This is not a situation in which people have been receiving assistance as was the case, for instance, in the Owens case where people had been receiving assistance and now are going to be cut off

the rolls of assistance on the grounds of some findings. This is an application procedure.

In the application procedure, for instance, the differentials between what it takes to take away a driver's license and what it takes to require a driver's license. We have dealt with that in our memorandum and we have referred to Supreme Court cases dealing with that difference or those differences—the difference between the application procedure and the withholding-of-granted-benefits procedures.

It is very important that this is an eligibility requirement and it is most important that this is an eligibility requirement because an applicant is required to prove eligibility, every element of eligibility.

If you were the mother of dependent children, you would have to bring in their birth certificates. Every person applying for public assistance has to bring their social security card so that the real resources and the last working date can be checked.

So, one must prove that one does not have resources and to do so one must refer to your prior employment, must have had to even before this statute was passed.

Therefore, if you have an eligibility requirement that you may not have voluntarily terminated your employment within the last 75 days for the purpose of obtaining public assistance, you have to prove your last date of employment yourself and you have to prove whether you were fired or whether you terminated, yourself, and you also have to prove, quite apart from the presumption that is at issue here, that you didn't do it for the purpose of obtaining public assistance.

Now, the reason for putting a presumption in there, in addition to that characterization, is because we are dealing here with minds of man and the purpose in leaving employment can be proved merely by your say-so; that is

not what I had in mind. What the statute says is that you have to introduce evidence. That doesn't mean that it cannot be oral evidence but it has to be evidence of the purpose for which you left your employment. I think to point out what "purpose" means may elucidate the difference, which is a slight difference between the State and the plaintiffs' positions.

On page 32 of their memorandum, the plaintiffs speculate on the reasons why people really leave their employment rather than get on public assistance. They include desire for advancement, health problems, family problems, transportation problems, personality conflicts and working conditions, just to mention a few. I like those reasons; I think they are very nice.

When you measure any one of them against starvation and eviction, which have been pleaded repeatedly in this case, they don't measure up. Nobody is going to leave his employment for advancement, health problems, family problems, transportation problems, personality conflicts, working conditions if they are going to have to starve until they find something new, so if you have in mind a valid reason to leave your employment, you have a terrible boss.

Before home relief was available, you didn't leave until you had someplace else to go and you had some valid means of support. The aim of this statute was to create legal obligation the same as has always existed and exists under the Federal statutes, that you are required to support yourself if you possibly can.

And this is defined as you cannot have in mind not only can't it be your principal purpose but you cannot have as a purpose the idea that public assistance will tide you over.

This is the aim of the statute and it is reasonable and one doesn't have to read studies of poverty to find out because we all are human, just as poor people are human,

and we all are motivated by the same desires. If a personality conflict in your employment gets to you and you think that you are going to starve if you leave, you don't leave until you find a new job, unless you have an idea that, well, my rent will be paid anyway until I find a new job and I can't stand it here any more. Your whole evaluation of your job will be different.

However, the statute itself assumes knowledge. It deters only the deterable. Therefore—

Judge Oakes: It deters everybody, doesn't it? I don't see on that basis how anybody who voluntarily leaves, if it is a purpose, obviously, he is aware of the fact that reasonable relief is available, so everybody has way in the back of his mind somewhere, "Oh, I presume I am not going to starve," therefore, he is ineligible.

Ms. Juviler: A lawyer for one of the intervening plaintiffs at one point said to me, "My client that I am seeking to intervene in this case came to me very surprised that he couldn't get unemployment insurance.

This was one of the cases where he said he didn't voluntarily terminate and was distraught and he said, "What can I do, where can I get money to live?" And this lawyer suggested, "You can go to public assistance," and he says, "But I am a man, I am not eligible for public assistance."

I then called the counsel to the Department of Social Services and I said, "On facts like that, can you find that that was the purpose of his in leaving, terminating his employment?"

And the counsel agreed with me that he could not. There is an example where you don't even know, so it only is for people who actually have it as a purpose and the presumption does not make people unable to prove the purpose. It is not that kind of presumption at all.

Everyone has a purpose for voluntarily terminating

their employment and if they didn't, then that is just the kind of situation which is absolutely required that the public money not be spent because the public is going to be supporting that able-bodied person forever, because they are going to constantly terminate employment and that is really the danger that the statute is enacted for. The statute is for the problem that anybody can leave their employment because the requirement is that they not leave for the purpose of obtaining public assistance.

Everyone can leave their employment and when anything gets unpleasant on the hope, maybe, that they will get another job, but in the back of their mind, the assumption that the public will support them. In the meantime, they don't have to save their money in order to tide them over.

Everyone who voluntarily terminates their employment must consider what they are going to do in the interim.

Judge Oakes: If that is really the legislative purpose, why did they limit it to 75 days, why not, say, if you voluntarily leave your employment with the idea in mind of living on public assistance, your home relief is forever terminated?

Ms. Juviler: But I think that is what proves the statute is absolutely reasonable, your Honor, because 75 days is a time limit, reasonable to expect that you would have to support yourself while looking for another job.

So if you voluntarily terminate your employment and after a 75-day period you still have not found other employment, you are required to be ready for employment to apply for public assistance. Then the assumption is that if you are destitute, we are going to aid you. We are not going to start looking at the purpose for which you left. It is long enough ago.

That is not why you are destitute now. The reason is that you have no income and haven't had an income for

75 days. So the 75 days is precisely the thing that makes this a reasonable statute and not a punitive one.

As, for instance, in Owens, as in the cases cited on the rebutttal presumption by the plaintiffs, they are all criminal cases. Obviously, there is nothing immoral or fraudulent about leaving your employment for the purpose of obtaining welfare. There is no implication in this statute that that is fraud.

The implication in this statute is that that is not how public money is going to be spent but there is no evil in that purpose. Plaintiffs attack the rebuttal presumption on the grounds that it is not related to facts. They say most poor people do not leave their jobs to obtain public assistance.

Obviously, this statute does not apply to all poor people. This applies to poor people who voluntarily terminated their employment and within 75 days applied for public assistance.

That is a very small sampling of the poor for the reasons set out in all these studies of the behavior of poverty. Poor people are less likely to leave their employment than rich people are, but if you are already poor, $184 a month may enable you to feel that an unpleasant job can be left. Therefore, the legislature of the State of New York has determined that that is not the way that it wants its public money spent, even though there is nothing evil about somebody wanting to leave an unpleasant job. There is nothing bad about it.

But that is not how the limited resources of the State are allocated under this statute.

As Judge Oakes pointed out, plaintiffs' argument fades away if it is a more restrictive statute, if it applies to and sanctions more people. If we say you voluntarily terminated your job, you are ineligible for 75 days, that statute does not fall as a rebuttal presumption and we do not get

into the situation that we are arguing today but, of course, that means that more not fewer people are affected by it.

And the purpose of this statute, the limitation reiterated by the limitation for purpose, is so that people who leave their employment on the assumption that they have another job waiting for them or their parents will support them or whatever, then find themselves in dire straits, there is no problem for the State to use some of its resources to support them for that reason, because they did not act on the basis of the availability of that income and, therefore, it cannot be abused by definition.

However, it would be more convenient to say that everybody has a duty to support themselves for 75 days after voluntary termination.

I also want to point out that since we filed our papers, Plaintiff Robert C. Lee's fair hearing was to be held and he did not appear. Therefore, we asked that this complaint against the State, against the defendant Lavine, be dismissed on the grounds that he has never asked the defendant Lavine to proceed, and Lavine has not had an opportunity to review the case.

Judge Wyatt: That is the intervenor that we allowed in.

Ms. Juviler: Yes.

Mr. Norlander: May it please the Court, that plaintiff intervenor had his hearing adjourned and he did not appear on the date of his hearing, but neither did the Agency's witness and it was agreed at the date of the hearing that we would reschedule the hearing, so I really don't see—

Ms. Juviler: I got different information. I am sorry, your Honor. I was given different information, that he defaulted and his hearing was cancelled.

Mr. Norlander: No. The hearing is still to be scheduled and still coming up.

Judge Oakes: Perhaps you can check and advise us.

Ms. Juviler: I will assume that is true. That is specifically why I asked you today because I wanted to make sure. Assuming what Mr. Norlander said was so, then I will withdraw and if I find to the contrary, I'll advise the Court.

Judge Wyatt: Obviously you differ on some of the inferences and, of course, on the conclusions of law but do you feel, Miss Juviler, that there are any issues of fact that would require a trial or is it just a question of whether your motion for summary judgment should be granted on the plaintiff?

Ms. Juviler: Your Honor, I have a pro forma statement pursuant to 9-B. I've forgotten to file it. These are the other answers to the other complaints, too.

I do not think that the issue that I understood that was to be argued today and that we have discussed today of the constitutionality of the statute, there are no issues of fact.

Judge Oakes: On its face.

Ms. Juviler: But if we deal with the scheduling of the hearing, then there will be issues of fact and there would need to be a trial.

May I address myself—

Judge Oakes: Why? It is clear enough that the State doesn't have to hold a hearing under its own regulations for a period of time.

Ms. Juviler: But the facts on the individual cases as presented we do disagree with in numerous specific facts as to: They applied on such and such a date; sought a fair hearing; asked an expedited fair hearing—we do disagree on several of those facts of the named plaintiffs.

We do not dispute on the law as to what we are required to do. As your Honors will note, most of the fair hearings here were considerably within the 90 days. They did not take 90 days.

Judge Wyatt: You mean if we get into the application of the statute to any given intervenor or to the plaintiff then there would be differences in facts?

Ms. Juviler: Yes, that is true, too, but particularly with regard to the scheduling of the hearings, the actual facts that are produced and whether they have a valid complaint, we would have issues of fact on that question but not on the question of the validity--

Judge Wyatt: But that assumes that we would find the statute on its face constitutional.

Ms. Juviler: Correct. We can go forward to that and may I just address myself for the moment to the question of whether the other issues should be determined by a three-judge Court.

We do not take any position. It is a question of how your Honors feel after going through the case, whether you want to keep those issues before the three-judge Court or send them back to one judge. We understand that under the law you have discretion to do that and it is not our concern.

Judge Oakes: Do you care to have anything in rebuttal?

Mr. Norlander: Yes, your Honor.

With reference to the as-applied claim, due process claim, the plaintiffs contend that the operative facts are really not in dispute.

First, individuals are disqualified and they are given a notice of an opportunity for hearing; they are disqualified summarily and they do not have the opportunity to rebut the presumption.

Secondly, the hearing scheduling matter is a matter of record in this Court. In the case of Nelson against Sugarman and annexed to our brief is the permanent injunction in that case and it is quite clear that the hearing schedules take some time, take a number of weeks and, for most people, the sanction runs before they obtain a fair hearing

decision. Certainly they suffer during the majority of the 75 day period.

The Owens case that we submitted by letter held that a hearing was required prior to the imposition of the sanction and we submit that since the hearing is not provided beforehand, there really are no facts or individual facts that would make any difference.

This also amplifies, I believe, plaintiffs case for a class action treatment because the State has indicated throughout this litigation that they feel that they can stand apart from the administration of this law until a State official makes a determination as to whether the law should apply and it would seem that in any enforcement proceeding, the State would attempt perhaps to wash its hands until they had had a chance to decide at a fair hearing, I would assume, which is not offered after 75 days.

That is all I have.

Ms. Juviler: Your Honor, I have one thing that I neglected to say about the fair hearing that would make it clear: The fair hearing can give more relief than this Court could and that is that the retroactive damages are precluded in this Court but at the fair hearing, when a person is found, for instance, eligible—for example, Mr. Streeter was found eligible; the statute was wrongly applied to him and he then receives his assistance from the first date of application. So that the fair hearing is never futile for a person who really believes that he did not leave for that purpose.

Secondly, very careless of me not to mention this, when I was telling Judge Bonsal what would happen to him when he got first—if the statute was applied to him and he didn't quite understand that he had to prove the purpose for which he left the employment, he could go back the next day and the day after and the day after that with additional evidence to rebut the presumption, whether or

not he had asked for a fair hearing. He would be entitled to continually reapply and so, there is not this idea "you did not provide an opportunity to rebut the presumption;" that is just factually not correct and I hope we don't disagree on those facts.

Judge Oakes: It doesn't appear in the papers, perhaps, but are you aware of any instance in which a person other than the plaintiff or a proposed intervenor in this suit has requested a fair hearing after imposition of the original sanction and then been given a retroactive award of benefits?

Ms. Juviler: I believe, your Honor, there was one case, when we tried to figure out how many cases were affected by this. As you will note in our answers to interrogatories, our guess was based on an inference on an inference, but we did look at all the fair hearing decisions in December and found that eleven cases had fair hearings which involved, to some extent, the interpretation of 131(a)10. None of those cases are involved in this case and one of the cases, the name of which I forget but I will send to the Court a copy, the statute was found not to have been properly applied.

Whenever that is true, however, your Honor, the relief is assistance from the time of application. That is not discretionary, unless of course, let's say, the person was found eligible for unemployment and had gotten that. But assuming he didn't have any more resources, he would always receive, from the date of the hearing, assistance from the date of the application.

Judge Oakes: I guess what I was aiming at was whether or not in fact when one brings suit against the State one gets better treatment than one might if one did not because all of the plaintiffs seemed to, as soon as they became plaintiffs or intervenors, suddenly be found not to have voluntarily terminated.

Ms. Juviler: You are using too broad a brush. The Department was totally unaware that the extent of the problem existed as the plaintiffs and intervenors suggest, totally unaware, and you will notice an administrative letter appended to our affidavit.

The State Department was unaware that this statute was being misunderstood by local welfare workers and the need for regulation was determined. That regulation is being prepared as part of the work rules which are presently in litigation in the Northern District in a remand from the Supreme Court in the "Dublino" case but the need for this regulation for home relief is now being prepared.

Judge Oakes: I trust the Department is duly grateful to the plaintiffs for having brought this to their attention.

Ms. Juviler: That is true, and I am sure that is true of the local departments. I didn't suggest that Milne was not eligible for assistance. I still don't have an opinion on that. I certainly don't have an opinion on the Streeter case but Mr. Davidson, who looked at the facts, said that he would talk to his client and that was not at the State's behest.

Judge Oakes: Gentlemen, do you have anything to add?

Mr. Davidson: County of Westchester has nothing to add.

Mr. Downs: All I would like to add is that the Joe Nathan-Beverly case was reheard and the Department affirmed the local department's ruling in that case and that was heard, by the way, within 17 days after the application.

Judge Oakes: I read the transcript.

Mr. Downs: I wish to add, your Honor, I've never submitted any papers because I am technically not allowed to; the Court hasn't entered the order yet. But as soon as it enters the order, I am going to answer.

Judge Wyatt: Hasn't entered which order?

Mr. Downs: The order on the Beverly case permitting them to intervene.

Judge Oakes: You don't have any objection to it, do you?

Mr. Downs: No.

Judge Wyatt: I believe you are mistaken.

Mr. Downs: I checked with the clerk and found it was not entered.

Judge Wyatt: April 10.

Mr. Downs: I didn't know that.

Judge Wyatt: Order permitting Willy Beverly and other Beverlys to intervene.

Mr. Downs: I checked with the clerk not only on the phone on the 25th, but also this morning.

Judge Oakes: You may treat it as entered. If it hasn't been previously, it is.

Judge Wyatt: The time is here. If you look through the file, the deputy clerk has the file and you will find that the order has been entered.

Mr. Downs: I went to the Unit 4 downstairs and had them pull the file and I wanted to find out and she said it hasn't been entered.

Judge Oakes: It is a mix-up, but, in any event, consider it entered. How about Brown, Lee and Reed? I think that is a pending motion to intervene that hasn't really been determined. It was only filed on the 26th.

Mr. Norlander: The plaintiffs, as we have noted in our memorandum, have sought intervention by these plaintiffs out of an abundance of caution. These are persons who have lost fair hearings and, therefore, we would contend that if, in the light of the defendants' suggestion that exhaustion was a requireemnt, we sought to intervene those persons.

At about the same time these persons intervened, a deci-

sion came down in the Beverly case in which the State made a determination that the law had applied to the plaintiffs.

Plaintiffs suggest that if these people be allowed to intervene, it be on the grounds to protect the interest of the class and that was the only reason that the motion was brought.

Judge Wyatt: Well, that reason has largely disappeared, hasn't it, in the face of the Beverly determination?

Mr. Norlander: That is correct, your Honor.

Judge Wyatt: And I take the view, as I may have already explained to you, that in this kind of an action, intervention is simply procedurally complicating.

Mr. Norlander: We agree. In the case of Hurley and VanLeer, another New York welfare case, Judge Bauman considered interventions and we held them in abeyance until after granting class action status and then denied them.

Judge Oakes: We will take the matter under advisement.

Ms. Juviler: I have one small point about that. If intervention is granted, people cannot seek to review the hearings in Article 78 and raise the same issues as here, whereas an individual plaintiff might have a broader ground for relief if this case proceeds here and also he is able to seek Article 78 relief in the State Court; that is, to review not only the factual considerations but to attack the statute and he wouldn't be harmed because the case would be properly presented in this court. So there is a reason for that.

Judge Oakes: We will take it under advisement.

(Hearing adjourned.)

Opinion of the Three-Judge District Court Granting Declaratory and Injunctive Relief.

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF NEW YORK

No. 73 Civ. 5397

Ronald Milne, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

Douglas Streeter, Robert C. Lee, Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, by their mother and next friend, Roberta Beverly, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

v.

Leonard Berman, individually and as Commissioner of the Westchester County Department of Social Services, and Abe Lavine, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

George E. Boisvert, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Before OAKES, *Circuit Judge*, BONSAL and WYATT, *District Judges*.

Gerald A. Norlander, White Plains, N. Y. (The Legal Aid Society of Westchester County, White Plains, N. Y., Martin A. Schwartz, Catherine Cronin and Hillary Sohmer, of counsel), for Plaintiffs.

Gerald A. McIntyre, Corning, N. Y. (Monroe County Legal Assistance Corp., Flood Disaster Relief Project), for Intervenor-Plaintiffs.

Amy Juviler, Assistant Attorney General (Louis J. Lefkowitz, Attorney General of the State of New York, of counsel), for Defendant Lavine.

Richard A. McAtamney, White Plains, N.Y. (Harry Lott, Westchester County Attorney), for Defendant Berman.

Harrison Downe, Canandaigua, N. Y., for Intervenor-Defendant.

OPINION

OAKES, *Circuit Judge:*

The named plaintiff and intervenor plaintiffs, welfare recipients, herein collectively "plaintiffs," seek on behalf of themselves and others similarly situated, declaratory relief, injunctive relief, and damages against the Commissioner of the New York State Department of Social Services and the Commissioner of the Westchester County

Department of Social Services. Plaintiffs claim that a New York welfare statute, N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973), and a regulation of the New York State Department of Social Services promulgated pursuant thereto, 18 N.Y.C.R.R. § 385.7,[1] violate the due process and equal protection clauses of the fourteenth amendment to the United States Constitution. The statute and regulation disqualify from receipt of assistance for 75 days persons who voluntarily terminate their employment or reduce their earning capacity for the purpose of qualifying for Home Relief or Aid to Families with Dependent Children. The claims of plaintiffs, as later more fully discussed, are specifically directed to a further provision of the statute and regulation which states that a person who applies for assistance within 75 days after voluntarily terminating his employment or reducing his earning capacity shall "be deemed" to have done so "for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

Jurisdiction of this court is based upon 28 U.S.C. § 1343(3) and 42 U.S.C. § 1983 since plaintiffs' complaint alleges a substantial claim involving the denial by defendants, acting under color of state law, of rights guaranteed by the fourteenth amendment to the United States Constitution. Declaratory relief is sought pursuant to 28 U.S.C. § 2201, injunctive relief under 28 U.S.C. § 2202 and compensatory and punitive damages under 42 U.S.C. § 1983. *See Hagans* v. *Lavine,* 42 U.S.L.W. 4381, 4384-86 (U.S. Mar. 25, 1974).

Because plaintiffs seek to enjoin the enforcement of a state statute, N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973), on the ground that it is contrary to the Constitution of the United States, a three-judge court was convened pursuant to 28 U.S.C. §§ 2281, 2284.

I.

There are before the court motions from three separate movants: plaintiffs, intervenors and defendant Lavine. The first motions to be considered will be those by plaintiffs (1) for an order determining that the action may be maintained as a class action (Fed. R. Civ. P. 23(c)(1)), and (2) for "final summary judgment in favor of plaintiffs for the declaratory and injunctive relief prayed for in paragraphs (D), (E) and (F) of the Wherefore Clause of the Amended Complaint" (Fed. R. Civ. P. 56). We shall first consider the summary judgment motion and later treat the class action motion.

A. *Summary judgment.*

Section 131(10) of the New York Social Services Law provides as follows:

> Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests in increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, *in the absence of evidence to the contrary supplied by such person.*

(Emphasis added.)

Plaintiffs make three basic arguments:

1. The statutory presumption of a wrongful intent to obtain welfare benefits is irrational and thus violates the due process clause because there is a logically insufficient connection between provable facts (that an applicant voluntarily terminated his employment or reduced his earning capacity) and the presumed fact (that he did so for the purpose of qualifying for assistance or a larger amount thereof);

2. The challenged statute operates conclusively to presume essential facts in violation of the due process clause because plaintiffs are not afforded timely hearings—they have no opportunity to rebut the preumption of the statute and regulations at the time they apply for assistance and, by the time the State actually holds a hearing at which rebuttal evidence can be introduced and renders a final decision, the 75 days referred to in the statute have expired; and

3. The statute violates the equal protection clause because it arbitrarily burdens the plaintiffs' class with a presumption of ill motive—other applicants for public assistance being entitled to apply and have their eligibility assessed free of any negative presumption.

Since we agree with the plaintiffs on their first point, it is unnecessary for us at this stage to reach the second or the third.

On its face, the challenged statute provides that a person who applies for public assistance within 75 days after the

voluntary termination of his employment is presumed to have terminated his employment "for the purpose of qualifying for . . . assistance . . .., in the absence of evidence to the contrary supplied by such persons." The regulation in question in subparagraph (b) simply restates this.

The statute creates a rebuttable presumption that an applicant terminated his employment with a wrongful purpose that justifies a 75-day hiatus before public assistance begins. A legislative presumption cannot stand, however, "when it is entirely arbitrary, or creates an invidious discrimination, or operates to deprive a party of a reasonable opportunity to present the pertinent facts in his defense." *Bandini Petroleum Co.* v. *Superior Court,* 284 U.S. 8, 19 (1931) (holding that there was a "manifest connection" between the proven fact, blowing, release or escape of natural gas, and the presumed fact, unreasonable waste.) A statutory presumption is not arbitrary only if "it can be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend." *Leary* v. *United States,* 395 U.S. 6, 36 (1969) (presumption of knowledge that marijuana was illegally imported), *following Tot* v. *United States,* 319 U.S. 463 (1943) (the possession of a firearm and ammunition presumptive evidence that the firearm or ammunition was transported or received in violation of the Federal Firearms Act). *Accord, United States* v. *Romano,* 382 U.S. 136 (1965) (possession, custody or control of still, presumed by statute from presence at site unless defendant explains presence violates due process clause). Thus, if there is a logical nexus between the proven fact and the presumed fact, the statutory presumption can be upheld. *Bandini Petroleum Co.* v. *Superior Court, supra; Mobile, Jackson & Kansas City Railroad Co.* v. *Turnipseed,* 219 U.S. 35, 43-44 (1910). But where such a connection is lacking, due process is violated. *United States Department of*

Agriculture v. *Murry,* 413 U.S. 508 (1973) (food stamps); *Vlandis* v. *Kline,* 412 U.S. 441 (1973) (resident tuition); *Owens* v. *Roberts,* 377 F. Supp. 45 (M.D. Fla. 1974) (three-judge court) (statute relating to transfer of assets as exclusion from welfare eligibility creates rebuttable but irrational presumption that such transfer was for the purpose of becoming eligible for welfare assistance); *DeKalb Real Estate Board, Inc.* v. *Chairman and Board of Comissioners of Roads,* 372 F. Supp. 748, 753-54 (N.D. Ga. 1973) (posting of sign by real estate broker improperly creates prima facie case of intentional "block-busting").

We hold that the statutory rebuttable presumption is irrational and in violation of the due process clause because there is an insufficient connection between the known fact, that is, application for public assistance within 75 days of an appellant's termination of employment, and the fact presumed by the statute, that is, that the applicant terminated his employment for the purpose of qualifying for public assistance.

Plaintiffs here are all applicants for Home Relief,[2] even though the challenged statute also encompasses applicants for Aid to Families with Dependent Children (AFDC), 42 U.S.C. §§ 601 *et seq.* For present purposes, we perceive no constitutional difference between financial aid received under the federally assisted AFDC and the New York state and local government program of Home Relief.

The amount of the governmental benefit here involved as Home Relief—exclusive of the limited amount of shelter allowance, said to be $3 per day—is $84 a month for one person in a household, $134 for two, $179 for three, $231 for four, $284 for five, and $329 for six, with each additional eligible needy person in the household being entitled to an additional allowance of $45 monthly. N.Y. Soc. Serv. Law § 131-a(3) (McKinney Supp. 1973). The New York City Human Resources Administration 1972 Annual Re-

port indicates that in that year 142,123 persons were receiving Home Relief in New York City, including 60,531 children, and that the average monthly grant for 66,751 cases was $158.41 or $74.40 per person. On the strength of these sums, we think it cannot be assumed that any substantial number of people would terminate their employment in order to receive assistance. *See Rothstein* v. *Wyman,* 303 F.Supp. 339, 348-49 (S.D.N.Y. 1969), *vacated and remanded on other grounds,* 398 U.S. 275 (1970).[3]

Any number of reasons for terminating employment exist—desire for advancement, problems of health, family problems, transportation problems, personality conflicts, working conditions, and perhaps simply basic discontent with a job, to mention a few.[4] Indeed, the New York City Human Resources Administration 1972 Annual Report states that as many as 23 per cent of the applicants for Home Relief in 1967 left their prior employment due to illness. *Id.* at 62. There may also be numerous reasons why a person who terminates his employment subsequently becomes impoverished and has to resort to a request for public assistance—general economic conditions, a decline in jobs available in a particular industry, health, or failure to receive an anticipated new position. Plaintiff Milne, for example, became needy when his employment insurance benefits were delayed for about two months as the result of an erroneous initial disqualification. Thus we view the statutory presumption compelling an inference that plaintiffs left their employment to obtain Home Relief arbitrary, unreasonable and in violation of due process.

Beyond this, while there may be individual exceptions to the contrary, we do not think it can be stated as a general rule, as the statutory presumption would have it, that poor people do not have the same desire to work and to obtain the fruits of work as the non-poor.

As stated in Work in America, Report of a Special Task Force to the Secretary of Health, Education and Welfare (MIT Press 1973), at 176:

> Underneath the resentment and the frustration, and giving rise to them, are a host of unverified assumptions about the character and composition of the welfare population: most poor people don't want to work; most people on welfare are black; welfare mothers have babies to increase their welfare benefits; people on welfare live well and easy; most people on welfare want to be on welfare; etc.
>
> Every one of these assumptions is demonstrably false as a generalization and is true only in the occasional particular. The facts are that most poor people are not on welfare and the majority of poor people not only want to work, but do work, year round and full time; black families, though over represented, make up less than half of the AFDC caseload; the average monthly payment for a recipient on AFDC is $49.60; most mothers on AFDC do want to work—it is not difficult to add to the factual side of this misunderstood issue.
>
> . . . [T]hese false stereotypes of poor people, black people and AFDC families are widely held by the general public.

See also Irelan, Low Income Life Styles, U.S. Department of Health, Education and Welfare, Social and Rehabilitation Service, Office of Research and Demonstration (1967) at 5.

In short, the statutory inference that members of the plaintiffs' class leave their employment to obtain Home Relief is not based upon known facts and experience. Under the cases that we have cited, the statute is therefore

unconstitutional in creating a presumption not sustainable in fact.

The State argues, of course, that while the statute creates a presumption it is by definition rebuttable[8] and is not burdened by any special standard of proof. The legislature may, the argument runs, rationally intend to deter persons from leaving employment in the expectation of obtaining public assistance, encourage people to be self-sufficient, reduce the unnecessary invasion of the public fisc and allocate the finite public resources for welfare to persons unable to support themselves. Agreement with all of these points, however, validates only the first sentence of § 131(10); the arguments do not justify the presumption operative so as to impute bad motive in *all* cases. The State points out that the disqualification is only for 75 days, but to the hungry 75 days is sufficient time in which to starve.[9]

In addition, the State argues that since the motive for terminating employment is within the knowledge of the applicant alone it is reasonable for him to bear the risk of nonpersuasion, citing J. Wigmore, Evidence § 2486, at 275 (3d ed. 1940). But as Wigmore himself points out, placing the burden of proof (or the risk of nonpersuasion) on the party who has "peculiar means of knowledge" "furnishes no universal working rule; if it did, then the plaintiff in an action for defamation charging him to be living in adultery should be required to prove that he is lawfully married." *Id.* What we are concerned with here is a matter of fairness and experience, resolving itself ultimately into a question of policy. In the situation before this court, those persons to whom the presumption is directed are typically the least capable to employ the means to rebut the presumption. This can be best shown by the fact that § 131(10) was applied to several of the intervenors notwithstanding little or no indication that leaving

their employment was in any meaningful sense "voluntary," let alone for the purpose of receiving assistance. *See* note 4, *supra*. To require these persons to prove their innocent motives for terminating employment is effectively to deny them all chances of obtaining the benefits which they seek.

The State relies both on *San Antonio School District* v. *Rodriguez,* 411 U.S. 1, 43-44 (1973), and *Dandridge* v. *Williams,* 397 U.S. 471, 487 (1970), for the proposition that legislative classifications involving questions of economic and social policy must be given due credit whether we are talking about welfare benefits or the cost of public education. Both *Rodriguez* and *Dandridge,* however, involve the equal protection clause and its limitations, answering negatively whether or not strict scrutiny would apply so as to require the State to justify its particular law by showing a "compelling State interest." We do not reach the equal protection argument, nor need we do so since what we are here concerned with is an invalid presumption as a matter of due process. The State has cited us to no case which would support the presumption here involved, nor does it attempt to answer the "Brandeis-brief" points made by the plaintiffs and, to a certain extent, relied upon by us above. Only recently, in any event, in a suit brought by Cynthia Hagans et al. against the same defendant here, the Supreme Court held that neither *Dandridge* nor *Rodriguez* could be read "to suspend the operation of the Equal Protection Clause in the field of social welfare." *Hagans* v. *Lavine,* 42 U.S.L.W. 4381, 4385 (U.S. Mar. 25, 1974) (also holding that "recouping emergency rent payments from future welfare disbursements . . . [thereby depriving] needy children because of parental fault, was not so 'patently rational' as to require no meaningful consideration" by the courts). The question remains what form of relief will the court give and to whom?

B. *Class action.*

Plaintiffs ask that it be determined that the action may be maintained as a class action. As we view it, the requirements of Rule 23(b)(2) are met as to a class action. The prerequisites of Rule 23(a) are satisfied since the class is so numerous that joinder of all members is impractical; there is a question of law common to the class, *viz.*, whether the rebuttable presumption is rational and in accord with due process; the claims of the representative parties are typical of the claims of the class; and, represented by the Legal Aid Society, as they are, the representative parties will fairly and adequately protect the interests of the class. This being true, we also find that the defendants have acted or refused to act on grounds generally applicable to the class, *viz.*, on the basis that the statute is rational and constitutional. We therefore declare that the class is composed of all individuals who have been or may hereafter be disentitled to Home Relief on the basis of the statutory presumption of Social Services Law § 131(10) and its supporting regulations.[7]

We declare the second sentence of § 131(10) and the supporting regulations unconstitutional insofar as they impose on Home Relief and AFDC applicants the burden of proving that their voluntary termination of employment was not "for the purpose of qualifying for Home Relief or aid to dependent children, or a larger amount thereof," and we hereby order that the defendants be and they are hereby enjoined from enforcing the provisions of N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973) and 18 N.Y.C.R.R. § 385.7 in that regard.[8]

II.

There is also before the court a motion by Anthony Brownlee and Ethel Reid for an order permitting them to intervene as parties plaintiff. They cite Fed. R. Civ. P. 23 and 24.

We do not find any response to this motion by defendants but at oral argument counsel for these proposed intervenors stated that, in light of the permitted intervention of the Beverlys and the determination by the State in their case, the reason for any intervention by Brownlee and Reid had largely disappeared. Moreover, these proposed intervenors are presumably members of the class as already defined. As such they may, if so advised, "enter an appearance through . . . counsel." Fed. R. Civ. P. 23(c)(2)(C). There is no reason for them to intervene, and the motion is denied.

III.

There is also before the Court a motion by defendant Lavine for an order granting judgment for defendants "insofar as the complaint claims that Social Services Law § 131(10) is unconstitutional" (citing Fed. R. Civ. P. 12(c)) or in the alternative for summary judgment to the same effect (citing Fed. R. Civ. P. 56(b)). In view of our decision on the motion by plaintiffs, this motion by defendant Lavine must be, and is, denied.

Settle an order or orders.

Done this 11th day of November, 1974.

JAMES L. OAKES
U. S. Circuit Judge

DUDLEY B. BONSAL
U. S. District Judge

INZER B. WYATT
U. S. District Judge

[1] A 1974 amendment to the New York Social Services Law, N.Y. Laws 1974, ch. 621, § 2, renumbered the provisions challenged in this action to N.Y. Soc. Serv. Law § 131(11) (McKinney supp. 1974), although no change was made in the language.

18 N.Y.C.R.R. § 385.7 provides as follows:

> (a). A person who (1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof, or (2) without good cause fails or refuses to undergo a necessary medical examination or treatment, or to accept referral to and participate in a vocational rehabilitation or training program, including the work incentive program, or refuses to accept referral to and work in employment, including work relief, in which he is able to engage, shall be:
>
> (1). disqualified from receiving assistance for thirty (30) days thereafter and until such time as he is willing to comply with the requirements of this Part; except that
>
> (2). an applicant for or recipient of HR, who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for seventy-five (75) days thereafter and until such time as he is willing to comply with the requirements of this Part.
>
> (b). Any person who applies for HR or requests an increase in his grant, within seventy-five (75) days after voluntarily terminating employment or reducing his earning capacity or similarly within thirty (30) days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such assistance or larger amount thereof in the absence of evidence to the contrary supplied by such person.

While subparagraph (a)(2) facially establishes a conclusive presumption, subparagraph (b) appears to modify it by making the presumption rebuttable. It can be argued that the regulation is internally inconsistent.

[2] Persons eligible for assistance in the Home Relief category established pursuant to § 158 of the New York Social Services Law include:

> Any person unable to provide for himself, or who is unable to secure support from a legally responsible relative, who is not receiving needed assistance or care under other provisions of this chapter, or from other sources, shall be eligible for home relief. However, a person who shall be eligible for aid to dependent children according to the provisions of title 10 of this article shall be granted aid to dependent children and while receiving such aid shall not be eligible for home relief.

N.Y. Soc. Serv. Law § 158(a) (McKinney Supp. 1973). Examples of persons eligible for Home Relief would be needy adults who are not 65 years of age, blind or disabled. So, too, if a father were working 100 hours a month so as to make the family ineligible for ADC, but his earnings were not enough to support the family, the family would get Home Relief.

[3] Moreover, at least in view of the recent United States Supreme Court decision in *New York State Dep't of Soc. Serv.* v. *Dublino*, 413 U.S. 405 (1973), upholding New York State's work rules (against the general attack of preemption), and hence requireing compliance therewith as a condition of eligibility for assistance, N.Y. Soc. Serv. Law § 131(4), it is not reasonable to presume that currently employed persons would terminate their employment to attempt to avoid work.

[4] In order to maintain a clear record, plaintiff Milne resigned his employment of 17 years' standing as a security guard at Columbia University after he had been charged with alleged misconduct. Plaintiff Streeter did not report for work at Lifesavers, Inc., when the company instituted a new rule that required people to shave their beards after being advised that he could not use a mask in place of shaving his beard. After obtaining new employment as an orderly in a nursing home, he became ill and was unable to call his new employer. He was later told that his employment was terminated. Intervenor Lee's employment was terminated because of allegedly excessive absences, but it is not clear that he did indeed terminate voluntarily.

[5] In practice, however, this "rebuttable" presumption becomes irrebuttable. *See Owens* v. *Roberts*, 377 F. Supp. 45 (M.D. Fla. 1974) (three-judge court). Once a person has been denied Home Relief, he may refute the statutory presumption at a subsequent hearing. Plaintiffs' affidavits indicate that the hearing is normally scheduled three to four weeks after it is requested. Under existing procedures, defendants then have up to 60 days to render a decision. *See Nelson* v. *Sugarman*, 361 F. Supp. 1132 (S.D.N.Y. 1971). Quite obviously, a determination of whether the statutory presumption has been rebutted is totally meaningless when it occurs after the 75 day waiting period. This Catch-22 approach to procedural due process is evidenced in the record by the case of intervenor Lee. He was denied emergency relief on January 31,

1974. On February 5, 1974, he requested a hearing. The hearing was held on April 4, 1974, after the statutory 75 day sanction had run.

[6] In this regard the answer of defendant Lavine to plaintiff's interrogatory number 5 is not insignificant. The question was:

> State whether temporary or emergency assistance is granted under Section 133 of the New York Social Services Law, or under any other provision of law or regulation, to needy persons disqualified from receiving assistance under Section 131(10) of the New York Social Services Law and/or 18 N.Y.C.R.R. § 385.7, pending decisions after "Fair Hearings" requested by such persons . . . .

The answer given was:

> Temporary emergency assistance under § 133 of the Social Services Act is available by its terms only "pending completion of an investigation;" and thus is unavailable after the local agency has denied assistance, whether that denial is based on § 131(10) or any other provision of the Law . . . .

[7] More specifically, the members of the class are those needy persons residing in New York State who have applied for Home Relief or Aid to Dependent Children within 75 days after voluntarily terminating their employment and who have been, or may be, disqualified from receiving such assistance for any period due to the enforcement and application by defendants of the second sentence of N.Y. Soc. Serv. Law § 131(10) (McKinney Supp. 1973) and regulations issued thereunder.

[8] Any questions of interpretation of this order or of the order establishing the class, other than constitutional questions, as well as of the assessment of damages, may be heard by Judge Wyatt, acting individually. *See Rosado* v. *Wyman*, 397 U.S. 397, 402-03 (1970); *Public Service Comm'n* v. *Brashear Freight Lines*, 312 U.S. 621, 625 (1941); *Hamilton* v. *Nakai*, 453 F.2d 152, 160-61 (9th Cir. 1971), *cert. denied*, 406 U.S. 945 (1972).

Class Action Order.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiffs,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Plaintiffs having moved for an order that the above captioned action be maintainable as a class action pursuant

74-1137

Supreme Court, U. S.
FILED
DEC 1 1975
MICHAEL RODAK, JR., CLERK

to Rule 23 of the Federal Rules of Civil Procedure, and the Court having considered this motion, the affidavits annexed thereto, the written interrogatories and answers thereto, and plaintiffs' memorandum of points and authorities in support of this motion, and the Court having considered defendants' memorandum of law in opposition to this motion, and the Court having heard oral argument on this motion on the 10th day of May, 1974, and the Court having rendered its opinion dated and filed the 11th day of November, 1974, finding that the action is a proper class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, it is

ORDERED that the above-entitled action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure. The class consists of all persons residing in New York State who have or may apply for public assistance in the Home Relief or Aid to Needy Families with Dependent Children categories within 75 days after voluntarily terminating their employment and who have been, or may be disqualified from receiving such assistance for any period due to the enforcement and application by defendants, their successors, agents and employees of the presumption, that such persons terminated their employment for the purpose of qualifying for or receiving a greater amount of such assistance, contained in the second sentence of New York Social Services Law, § 131 (11) (McKinney Supp. 1974), and in 18 N.Y.C.R.R. § 385.7.

Dated: December 13, 1974, New York, New York.

.....
HON. INZER B. WYATT

Entered:

December 13, 1974

Final Judgment and Order of the Three-Judge District Court.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiffs,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

This cause having come on to be heard by a three-judge District Court pursuant to 28 U.S.C. §§ 2281 and 2284 to hear and determine plaintiffs' constitutional claims, and plaintiffs having moved for final summary judgment pur-

suant to Rule 56 of the Federal Rules of Civil Procedure for the declaratory and injunctive relief prayed for in the amended complaint, and defendant Lavine having moved to dismiss the complaint pursuant to Rule 12 of the Federal Rules of Civil Procedure, or in the alternative for summary judgment "insofar as the complaint claims that Social Services Law § 131(10) is unconstitutional", and the three-judge court having considered the pleadings, the written interrogatories and answers thereto, the affidavits and exhibits annexed thereto and the memoranda of points of points and authorities of the parties herein, and the three-judge court having heard oral argument on the 10th day of May, 1974, and the three-judge court having filed its opinion on the 11th day of November, 1974, and the three-judge court having found that there is no genuine issue as to any material fact and that plaintiffs are entitled to judgment as a matter of law in that the second sentence of New York Social Services Law § 131(11) (McKinney Supp. 1974) violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution, it is hereby

ORDERED that defendant Lavine's motion to dismiss the action or in the alternative for summary judgment be and the same hereby is denied, and it is further

ORDERED that plaintiffs' motion for summary judgment be and the same is granted to the extent set forth below; and it is further

ORDERED, ADJUDGED, AND DECREED that defendants, their officers, agents, servants, employees and successors and all others in active concert and participation with them be and hereby are permanently enjoined from enforcing, against the named plaintiff, the plaintiff-intervenors and all members of the plaintiff class, the presumption contained in the second sentence of New York Social Services Law,

§ 131(11) (McKinney Supp. 1974) and 18 N.Y.C.R.R. § 385.7 that persons who voluntarily terminated their employment within 75 days preceding their application for Home Relief or Aid To Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance; and it is further

ADJUDGED AND DECREED that plaintiffs are entitled to and are hereby granted a declaratory judgment in this action that the presumption contained in the second sentence of New York Social Services Law, § 131(11) (McKinney Supp. 1974), and in 18 N.Y.C.R.R. § 385.7, that persons who voluntarily terminated their employment within the 75 days preceding their application for Home Relief or Aid to Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Dated: December 13, 1974
New York, New York

JAMES L. OAKES
Hon. James L. Oakes
United States Circuit Judge

DUDLEY B. BONSAL
Hon. Dudley B. Bonsal
United States District Judge

INZER B. WYATT
Hon. Inzer B. Wyatt
United States District Judge

Judgment Entered:—12-13-74

RAYMOND F. BURGARDT
Clerk

Order to Show Cause for an Order of Contempt and Further Relief.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

Upon the notice of appearance of Terry Yant and Gladys Hart as aggrieved members of the plaintiff class, and upon

the affidavits of Terry Yant, Gladys Hart, John J. Kelly, E. Randolph Tucker, Gerald A. Norlander, Esq., and the exhibits annexed thereto, and upon the plaintiffs' memorandum of points and authorities submitted in support of their motion for an order

(1) Pursuant to 18 U.S.C. §§ 401 and 402 and Rule 14 of the Civil Rules of this Court, adjudging Abe Lavine and William Eagen, Jr., in their individual and official capacities, in contempt of this Court for their neglect, failure and willful refusal to comply with and obey the injunction issued by this Court on November 11, 1974, and granting equitable relief and damages of $200.00 each to Terry Yant, Gladys Hart, and the plaintiff class, awarding reasonable attorney fees, and such other and further penalties and sanctions as to the Court may seem just and proper; and additionally and alternatively,

(2) Granting immediate equitable relief to Terry Yant, Gladys Hart and all other members of the plaintiff class denied public assistance by Abe Lavine and his subordinates under color of the second sentence of Section 131(11) of the New York Social Services Law on or after November 11, 1974; and

(3) Awarding such other and further declaratory and equitable relief to Terry Yant, Gladys Hart and all other members of the plaintiff class as to the Court may seem just and proper;

And plaintiffs having fully set forth in their annexed affidavits and memorandum of points and authoriites the grounds for their motion, which are that Terry Yant, Gladys Hart and other members of the plaintiff class con-

Order to Show Cause for an Order of Contempt and Further Relief.

tinue to be disqualified from receiving public assistance by Abe Lavine and his subordinates, including William Eagen, Jr., under the provisions of the second sentence of Section 131(11) of the New York Social Services Law, contrary to this Court's injunction of November 11, 1974; it is hereby

ORDERED, that Abe Lavine, individually and as Commissioner of the New York State Department of Social Services, and William Eagen, Jr., individually and as Commissioner of the Dutchess County Department of Social Services, show cause at a motion term of this Court, to be held in Room 705, United States Courthouse, Foley Square, New York, New York, on the 19th day of December, 1974, at 2:30 P.M. or as soon thereafter as counsel can be heard why an order should not be made herein granting plaintiffs' motion; and it is further

ORDERED, that personal service of a copy of this order and the papers upon which the same is granted on the attorneys for Abe Lavine and William Eagen, Jr., on or before 3 P.M., December 17, 1974, shall be sufficient service of this order.

Dated: December 17, 1974, New York, New York.

s/ INZER B. WYATT

United States District Judge

Affidavit of Terry Yant, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

MILNE, et al.,

Plaintiff,

against

BERMAN, et al.,

Defendant.

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

TERRY YANT being duly sworn deposes and says:

1. I am 20 years old and reside at 20 Harrison Street, Poughkeepsie, Dutchess County, New York.

2. On October 21, 1974, I was released from Coxsackie Correctional Facility, Coxsackie, New York, after 18 months confinement and returned to Poughkeepsie, New York.

3. On November 1, 1974, I applied for a position as a packager with Candy Lane Industries, 132 North Hamilton Street, Poughkeepsie, New York.

4. On Monday, November 4, I was hired and began work which required extensive lifting and moving of heavy cartons.

5. On Wednesday, November 6, 1974, I quit this job because it put too much of a strain on a hernia condition for which I had had major surgery in June, 1973 and which continues to limit my activities.

6. On November 22, 1974, and again on December 4, 1974, I applied for public assistance with the Dutchess County Commissioner of Social Services and was denied on the ground that I voluntarily terminated my employment at Candy Lane (Denial letters are attached hereto and marked Exhibits A and B.)

7. Upon information and belief the reason for my denial is the Dutchess County and State Social Services Departments enforcement of N.Y. Soc. Serv. Law § 131 (10) (McKinneys Supp. 1973) and 18 N.Y.C.R.R. § 385.7 which create a presumption that my voluntary termination of employment was for the purpose of qualifying for public assistance.

8. I did not terminate my employment in order to qualify for public assistance, my reasons as described above related to my health, and my hope that I would soon be placed in a trade school with Hudson Valley Opportunities Industrialization Center, 54 North Hamilton Street, Poughkeepsie, New York.

9. Upon information and belief William Eagen, Dutchess County Commissioner of Social Services, agent of State Commissioner Abe Lavine, has actual notice of this court's decision in *Milne* v. *Berman.*

10. A true copy of the November 11, 1974, *Milne* opinion and order was served on Howard Swart, Assistant Director of Social Services.

11. In addition to my own application for public assistance and subsequent visits to the Dutchess County Social Services Department, several attempts to obtain an informal reconsideration of the Department's denial of my application have been made by John Kelly and Gene Anderson of Mid-Hudson Valley Legal Services Project, 50 Market Street, Poughkeepsie, New York.

12. Notwithstanding this fact, the Department continues to insist that its application of the statute and regulations cited in paragraph (7) above is correct.

13. I am presently, and was at the time of each of my applications, unemployed and without money or food of any kind. I am overdue on my rent and am in danger of eviction.

14. I have no other means of support or source of income.

15. I authorize the Legal Aid Society of Westchester County to represent me in proceedings before this Court.

WHEREFORE, I pray that the court:

1. Enter an order directing Abe Lavine and his agent William Eagen, to cease and desist enforcement of New York Social Services Law 131 (10) and 18 NYCRR § 385.7.

2. Award damages in the amount of $200.

3. Award reasonable attorneys fees.

4. Adjudicate Abe Lavine and William Eagen in their individual and official capacities in contempt for failure to comply with this Court's order of November 11, 1974.

(Sworn to by Terry Yant, December 12, 1974.)

Notice of Denial of Assistance, Exhibit "A" to Yant Affidavit.

DUTCHESS COUNTY
DEPARTMENT OF SOCIAL SERVICES

County Office Building
Poughkeepsie, N. Y. 12601
Telephone 485-9750

In reply, please
refer to: City
December 4, 1974

Terry Yant
20 Harrison St.
Poughkeepsie, N.Y. 12601 HR 19772

Dear Madam:

Your application for Public Assistance Eff. 11/22/74 under the provisions of the Social Welfare Law, has been thoroughly investigated and the facts given careful consideration. Your application for this form of assistance has been denied for the following reasons: You voluntarily terminated your employment at Candy Lane.

We enclose a printed folder for the purpose of informing you of the provisions of the Social Welfare Law and of your rights and obligations thereunder.

Very truly yours,

WILLIAM J. EAGEN, JR.
Commissioner

JOHN H. BATTISTONI, III
John H. Battistoni, III
Director

JHB:adb

Second Notice of Denial of Assistance, Exhibit "B" to Yant Affidavit.

DUTCHESS COUNTY
DEPARTMENT OF SOCIAL SERVICES
County Office Building
Poughkeepsie, N. Y. 12601
Telephone 485-9750

In reply, please
refer to: City
December 5, 1974

Terry Yant
20 Harrison St.
Poughkeepsie, N.Y. 12601 HR 19772

Dear Madam:

Your application for Public Assistance Eff. 12/4/74 under the provisions of the Social Welfare Law, has been thoroughly investigated and the facts given careful consideration. Your application for this form of assistance has been denied for the following reasons: Quit job.

We enclose a printed folder for the purpose of informing you of the provisions of the Social Welfare Law and of your rights and obligations thereunder.

Very truly yours,

WILLIAM J. EAGEN, JR.
Commissioner

JOHN H. BATTISTONI, III
John H. Battistoni, III
Director

JHB:adb

SS-90

Affidavit of Gladys Hart, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

MILNE, et al.,

Plaintiff,

against

BERMAN, et al.,

Defendant.

STATE OF NEW YORK
COUNTY OF DUTCHESS } ss.:

GLADYS HART being duly sworn deposes and says:

1. I am 31 years old and reside at 150 Union Street, Poughkeepsie, County of Dutchess, New York.

2. For two and a half years I had worked for Bernice and Allen McCormick, 11 North Clinton Street, Poughkeepsie, New York, as a domestic helper.

3. On October 14, 1974, following an argument between myself and my employer, Bernice McCormick, I quit my job.

4. I felt it was impossible for me to continue working in their home as a result of the differences that had, in the course of my employment, developed.

Affidavit of Gladys Hart.

5. On November 14, 1974, I applied for public assistance with the Dutchess County Commissioner for Social Services and was denied on the ground that I voluntarily terminated my employment with Bernice and Allen McCormick. (Denial letter is attached hereto and marked Exhibit A.)

6. Upon information and belief the reason for my denial is the Dutchess County and State Social Services Departments enforcement of N.Y. Soc. Serv. Law § 131 (10) (McKinneys Supp. 1973) and 18 N.Y.C.R.R. § 385.7 which create a presumption that my voluntary termination of employment was for the purpose of qualifying for public assistance.

7. I did not terminate my employment in order to qualify for public assistance, my reasons as described above were personal and employment related disagreements with the McCormicks.

8. Upon information and belief William Eagen, Dutchess County Commissioner of Social Services, agent of State Commissioner Abe Lavine, has actual notice of this courts decision in *Milne* v. *Berman*.

9. A true copy of the November 11, 1974, Milne opinion was served on Howard Swart, Assistant Director of Social Services.

10. In addition to my own application for public assistance and a subsequent visit to the Dutchess County Social Services Department, several attempts to obtain an informal reconsideration of the Departments denial of my application have been made by John Kelly and Randolph Tucker of Mid-Hudson Valley Legal Services Project, 50 Market Street, Poughkeepsie, New York.

Affidavit of Gladys Hart.

11. Notwithstanding this fact, the Department continues to insist that its application of the statute and regulations cited in paragraph (6) above is correct.

12. I am presently, and was at the time of each of my applications, unemployed and without funds. I have not paid my rent since November 1, 1974, and have been borrowing money to pay for food.

13. I have no other means of support or source of income.

14. I authorize the Legal Aid Society of Westchester County to represent me in proceedings before this Court.

WHEREFORE, I pray that the court:

1. Enter an order directing Abe Lavine and his agent William Eagen, to cease and desist enforcement of New York Social Services Law 131 (10) and 18 NYCRR § 385.7.

2. Award damages in the amount of $200.

3. Award reasonable attorneys fees.

4. Adjudicate Abe Lavine and William Eagen in their individual and official capacities in contempt for failure to comply with this Courts order of November 11, 1974.

(Sworn to by Gladys Hart, December 12, 1974.)

Notice of Denial of Assistance, Exhibit "A" to Hart Affidavit.

DUTCHESS COUNTY
DEPARTMENT OF SOCIAL SERVICES

COUNTY OFFICE BUILDING
POUGHKEEPSIE, N. Y. 12601
TELEPHONE 485-9750

In reply, please refer to: City

November 18, 1974

Gladys Hart
150 Union St.
Poughkeepsie, N.Y. 12601 HR 19609

Dear Madam:

Your application for Public Assistance Eff. 11/14/74 under the provisions of the Social Welfare Law, has been thoroughly investigated and the facts given careful consideration. Your application for this form of assistance has been denied for the following reasons: Due to quitting your job on 10/14/74, you are ineligible until December 17, 1974.

We enclose a printed folder for the purpose of informing you of the provisions of the Social Welfare Law and of your rights and obligations thereunder.

Very truly yours,

WILLIAM J. EAGEN, JR.
Commissioner

JOHN H. BATTISTONI, III
John H. Battistoni, III
Director

JHB:adb

Affidavit of John J. Kelly, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

MILNE, et al.,

Plaintiff,

against

BERMAN, et al.,

Defendant.

STATE OF NEW YORK
COUNTY OF DUTCHESS } ss.:

JOHN J. KELLY being duly sworn deposes and says:

1. I am a law school graduate employed by Mid-Hudson Valley Legal Services Project (Monroe County Legal Assistance Corporation) 50 Market Street, Poughkeepsie, New York, 12601.

2. I am authorized to advise and represent clients pending admission to the bar, pursuant to an order of the Appellate Division, New York State Supreme Court.

3. On December 5, 1974, I was contacted by Terry Yant, told that he had been denied public assistance by the Dutchess County Social Services Department and asked to assist him in obtaining the public assistance benefits to which he is rightfully entitled.

Affidavit of John J. Kelly.

4. On December 4, 1974, I was asked by Gladys Hart to assist her in obtaining the public assistance benefits to which she is rightfully entitled.

5. Both Ms. Hart and Mr. Yant have received written denial letters (Ms. Hart's dated November 18, Mr. Yant's dated December 4 and December 5, 1974, which indicate that they are being refused public assistance for having quit their jobs.

6. The sole legal basis for both denials is the continued enforcement of New York Social Services Law § 131 (10) and 18 NYCRR 385.7, both of which were declared invalid by this court in *Milne* v. *Berman.*

7. Prior to the 4th of December, 1974, I and other members of the Mid-Hudson Valley Legal Services Project had discussed the application of the above cited statute and regulation in light of this Court's decision in *Milne* v. *Berman,* with employees and supervisory personnel of the Dutchess County Department of Social Services.

8. On November 26, 1974, E. Randolph Tucker served a true copy of the November 11, 1974, Opinion in *Milne* v. *Berman* on Howard Swart, Assistant Director Dutchess County Social Services Department.

9. On December 5, 1974, I spoke with William Eagen, Commissioner of the Dutchess County Social Services Department and inquired as to the Department's policy with respect to New York Social Services Law § 131 (10) and 18 NYCRR 385.7 and specifically in enforcing that policy in the cases of Gladys Hart and Terry Yant.

10. He informed me that he had knowledge of the *Milne* v. *Berman* opinion and would inquire further in his own

department and with the State Commissioners office in Albany as to the proper policy with respect to continued enforcement of the 75 day rule.

11. Later, on December 5, 1974, I was contacted by John Battistoni, Deputy Commissioner of Social Services, Dutchess County, and was informed that the County Department after consultation with the State Commissioners office was continuing with its policy of enforcement of the presumption of ineligibility found in New York Social Services Law 131 (10) and 18 NYCRR 385.7 and that as a consequence there would be no reconsideration of the denials of assistance to Mr. Yant and Ms. Hart.

12. On Friday, December 6, 1974, I again spoke with Mr. Swart and Mr. Battistoni and reconfirmed that they and the Commissioner had actual knowledge of the decision in *Milne* v. *Berman* and that their position of the previous day was unchanged.

13. Finally, on December 10, 1974, I again confirmed through Howard Swart the Assistant Director of Social Services that the Department would continue to enforce the above cited regulation and statute and was told by Mr. Swart that he had spoken to Albany the same day and received no instructions to the contrary.

(Sworn to by John J. Kelly, December 12, 1974.)

Affidavit of Service.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

MILNE, et al.,

Plaintiff,

against

BERMAN, et al.,

Defendant.

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

E. RANDOLPH TUCKER being duly sworn deposes and says:

1. I am not a party to the action herein, am over the age of 21 years and reside at 17 LaGrange Avenue, Poughkeepsie, New York.

2. That on the 26th of November, 1974, at the Dutchess County Social Services Department, 22 Market Street, Poughkeepsie, New York, I served a true copy of the November 11, 1974, opinion in *Milne* v. *Berman* on Howard Swart, Assistant Director Dutchess County Social Services Department.

3. I knew the person so served to be the person mentioned and described as follows: white skinned, about 38-40 years old, 5'7" tall, 155 lbs.

(Sworn to by E. Randolph Tucker, November 12, 1974.)

Affidavit of Gerald A. Norlander, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

Affidavit of Gerald A. Norlander.

GERALD A. NORLANDER, being duly sworn, deposes and says:

1. I am an attorney at law duly authorized to practice before this Court. I am of counsel to The Legal Aid Society of Westchester County, attorneys for plaintiffs and the plaintiff class, and I am fully familiar with the facts and the proceedings in the above-captioned action.

2. I make this affidavit pursuant to Rule 14 of the Civil Rules of the United States District Court for the Southern District of New York, in support of plaintiffs' motion to adjudicate defendant Abe Lavine and his subordinate, William Eagen, in their individual capacities and in their respective official capacities as Commissioners of the New York State and the Dutchess County Department of Social Services, in contempt of this Court's order granting an injunction issued November 11, 1974.

3. Abe Lavine and William Eagen have each received actual notice of the equitable decree issued November 11, 1974, by this Court, enjoining them from enforcement of the second sentence of Section 131(11) of the New York Social Services Law against members of the plaintiff class for any period of time. This Court said at page 14 of its opinion:

> "We declare the second sentence of [§ 131(11)] and the supporting regulations unconstitutional insofar as they impose on Home Relief and AFDC applicants the burden of proving that their voluntary termination of employment was not 'for the purpose of qualifying for Home Relief or aid to dependent children, or a larger amount thereof,' *and we hereby order that the defendants be and they are hereby enjoined from enforcing the provisions of N.Y. Soc. Serv. Law* [§ *131(1) (Mc-*

Kinney Supp. 1974)] and 18 N.Y.C.R.R. § 385.7 in that regard.[8]

Footnote 8.

"*Any questions of interpretation of this order or of the order establishing a class,* other than constitutional questions, as well as of the assessment of damages, may be heard by Judge Wyatt, acting individually." [emphasis added]

4. The order quoted in paragraph "3" above complies in all respects with the requirements of form for an injunction issued pursuant to Rule 65(d) of the Federal Rules of Civil Procedure.

5. To date, more than one month after being restrained by this Court, defendant Lavine continues to permit his subordinate County Commissioners, including William Eagen, and their agents, employees, and attorneys to continue to enforce and apply the provisions to the detriment of members of the plaintiff class, contrary to this Court's mandate:

(A) Upon information and belief, defendant Lavine has not, as of this date, instructed his subordinate County Commissioners to obey this Court's order by any written "Administrative Letter";

(B) Upon information and belief, the regulations enjoined by this Court's order have not been modified as of this date by defendant Lavine, nor has Lavine instructed his subordinate County Commissioners to revise their respective caseworker's manuals or issue other staff instructions to comply with this Court's injunction of November 11, 1974.

(C) I have notified defendant Lavine's attorney, Amy Juviler, Esq., of counsel to Hon. Louis J. Lefkowitz, Attorney General for the State of

New York, of several instances of continued enforcement by Lavine's agents of the provisions enjoined by this Court, including the enforcement of the provisions against Terry Yant, Gladys Hart, John Hepler and others.

(D) On December 11, 1974, I informed Amy Juviler, Esq., that plaintiffs believed that this Court on November 11, 1974, had enjoined defendant Lavine and his subordinates from any further enforcement of the second sentence of Section 131(11) of the New York Social Services Law (McKinney Supp. 1974). I informed her that even if steps were taken to cease enforcement of the enjoined provision in certain individual instances called to her attention, such instances in plaintiffs view were contrary to the plain language quoted in paragraph "3" above, and thus constituted a contempt of this Court's prohibition of denial of aid to class members "for any period" under the enjoined provisions. Ms. Juviler replied in substance that she did not believe that defendant Lavine was presently enjoined by this Court from enforcement of the second sentence of Section 131(11) of the New York Social Services Law (McKinney Supp. 1974).

(E) Defendant Lavine knows, or has reason to know that his subordinates, agents and employees will continue to enforce the provisions enjoined by this Court against members of the plaintiff class unless and until he issues instructions to them to obey this Court's order, and he has willfully refused to issue such instructions;

(F) Defendant Lavine has made no application to the Court for clarification or stay of the order entered November 11, 1974;

(G) William Eagen has actual knowledge of this Court's injunction, but he continues, as of this date, to refuse assistance to Terry Yant and Gladys Hart in defiance of this Court's injunction.

5. Upon information and belief, based upon calls from other legal services attorneys, numerous members of the plaintiff class have suffered great deprivation, distress, harm and injury due to the continued enforcement by defendant Lavine's agents of the provisions enjoined by this Court. And for this reason, plaintiffs are proceeding by Order to Show Cause. Two of these class members who have come to legal services offices for assistance are Terry Yant and Gladys Hart, who were denied assistance because they applied for aid within 75 days of leaving their employment. No prior application for relief for these persons has been made to any court.

6. Upon information and belief, by reason of Abe Lavine's and William Eagen's disobeyance of this Court's injunction of November 11, 1974, members of the plaintiff class who have been wrongfully denied benefits due them, Terry Yant and Gladys Hart, have been damaged in at least the amount of $200.00 each.

By reason of Abe Lavine's and William Eagen's disobeyance of this Court's injunction, plaintiffs' counsel were unnecessarily diverted from providing valuable legal services to other poor persons in other matters, making it appropriate for the Court to award reasonable attorney's fees for the cost of this motion to The Legal Aid Society of Westchester County.

WHEREFORE, I respectfully request that the Court grant plaintiffs the relief requested in their motion.

(Sworn to by Gerald A. Norlander, December 16, 1974.)

Affidavit of John H. Battistoni, in Opposition to Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, Individually and on Behalf of All Other Persons Similarly Situated,

Plaintiff,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, By Their Mother and Next Friend, ROBERTA BEVERLY, Individually and On Behalf of All Other Persons Similarly Situated,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, Individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, Individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, Individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

JOHN H. BATTISTONI, being duly sworn, deposes and says:

1. That he is the Deputy Commissioner of Social Services for the County of Dutchess;

2. He is familiar with the facts of the matter now before this Court;

3. On or about 26 November 1974, a copy of the opinion made by the Honorable Justice H. J. Oakes in the matter of *Milne and others vs Leonard Berman and others* was hand-delivered to Howard Swart, Assistant to the Deputy Commissioner of Social Services for the County of Dutchess, by a person who identified himself as a member of the staff of the Dutchess County Legal Service Agency;

4. Upon receiving this decision, Mr. Swart delivered the same to me personally;

5. After reading the opinion, I inquired of my staff as to whether there were presently any matters that our office was handling which would be effected by Section 131 subdivision 11 of the Social Services Law which was the subject matter of the aforementioned opinion;

6. On or about 9 December 1974, I was informed that our office was denying benefits to certain persons based upon the above cited section of the Social Services Law;

7. It should be noted that our office had received no word formally concerning the aforementioned opinion from the New York State Department of Social Services;

8. On or about 9 December 1974, I called and spoke with a Mr. Paul Harrington, who identified himself to me as being a member of the Legal Staff of the New York State Department of Social Services, concerning the opinion mentioned herein;

9. Mr. Harrington advised me that the opinion had been made by the Honorable Justice Oakes on 17 November 1974,

however, as of that time an order had not been signed pursuant to the opinion;

10. Mr. Harrington also advised me that the decision was legally not binding upon the New York State Department of Social Services until an order pursuant to the opinion was signed;

11. Mr. Harrington further advised me that he expected an order to be signed pursuant to the decision during the week of 9 December 1974 and that once such order was issued procedures would be adopted accordingly;

12. On or about 13 December 1974, I advised my staff to take no further action on cases involving Section 131 subdivision 11 of the Social Services Law until a formal directive was received by the New York State Department of Social Services;

13. On or about 13 December 1974, I further advised my staff that all decisions of our department made prior to the date of the opinion mentioned herein would be considered valid unless contrary instructions were received by the New York State Department of Social Services;

14. As of the date of this writing, 18 December 1974, our department has yet to receive (1) an order pursuant to the opinion mentioned herein; (2) any directive from the New York State Department of Social Services which would affect a change in the procedure by which we handle matters concerning Section 131 subdivision 11 of the Social Services Law;

WHEREFORE, it is submitted that:

1. The County of Dutchess Department of Social Services has never been formally advised of an order being

entered pursuant to the opinion of Mr. Justice Oakes as mentioned herein;

2. A formal directive advising the County of Dutchess Department of Social Services that a change in the procedure as set forth in Section 131 subdivision 11 of the Social Services Law has never been received from the State of New York Department of Social Services;

3. Accordingly, the County of Dutchess Department of Social Services and more specifically its Commissioner, William J. Eagen, Jr., has neither disobeyed nor willfully refused to comply with any order or directive which would change the procedure of the Department as set forth in Section 131 subdivision 11 of the Social Services Law.

(Sworn to by John H. Battistoni, December 18, 1974.)

Defendant's Notice of Motion for an Order of a Partial Stay.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiffs,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenors-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenors-Defendants.

SIRS:

PLEASE TAKE NOTICE that upon the affidavits of Amy Juviler and Henry Gruffi, and upon the accompanying memorandum of law, defendant Abe Lavine will move

Defendant's Notice of Motion for an Order of a Partial Stay.

this Court at Room 705, United States Courthouse, Foley Square, City of New York, on the 19th day of December, 1974 at 2:30 o'clock in the afternoon of that day or as soon thereafter as counsel may be heard for an order staying so much of the execution of the order of this Court dated December 13, 1974, as enjoined the application of the presumption contained in the second sentence of New York Social Services Law § 131(11) and 18 NYCRR § 385.7 to persons applying for Aid to Needy Families With Dependent Children assistance and granting such other and further relief as to this Court may seem just and proper.

Dated: New York, New York, December 19, 1974.

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant Lavine

.....

AMY JUVILER
Assistant Attorney General

To: HON. WILLIAM EAGEN, Commissioner
Dutchess County Dept. of Social Services

THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY

HON. HARRY LOTT
County Attorney

HON. GEORGE E. BOISVERT
Commissioner of Social Services
for Ontario County

MONROE CO., LEGAL ASSISTANCE CORP.
FLOOD DISASTER RELIEF PROJECT

Affidavit of Amy Juviler, in Opposition to Contempt and in Support of Motion for a Partial Stay.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiffs,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenors-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenors-Defendants.

STATE OF NEW YORK
COUNTY OF NEW YORK } ss.:

Affidavit of Amy Juviler.

AMY JUVILER, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of Louis J. Lefkowitz, Attorney General of the State of New York, attorney for defendant Lavine. I make this affidavit in opposition to plaintiff's motion for an order of contempt and equitable relief and in support of defendant Lavine's motion for a partial stay of the order.

I am familiar with this proceeding, having handled it since its inception.

I was informed of the opinion of the Court dated November 11, 1974 on November 12, 1974 when a short article appeared in the New York Times of the latter date.

I went to the United States Courthouse before noon on December 12, 1974, to obtain a copy of the opinion. It was not available from either Chambers or the Clerk's Office. Ultimately, I borrowed a copy from the press room. Later in that day, I telephoned Henry Gruffi, of Counsel's Office of the Department of Social Services, who is in charge of the Litigation Bureau for the State Department of Social Services and summarized the opinion. I also sent a copy to Counsel's Office, but because of the vagaries of the mail, it did not arrive until November 15, 1974. The effect of the decision was discussed by members of Counsel's Office and me and a discussion as to whether to seek a stay of the order of the Court was the most important subject of those discussions.

On November 18, 1974, I received plaintiff's proposed orders and on November 25, 1974 submitted our counter-orders.

I have received phone calls from several persons concerning the proposed orders in this case. Mr. Norlander brought several cases to my attention as did one other attorney for a public assistance client.

Affidavit of Amy Juviler.

I called Mr. Gruffi in each instance and asked him to check on the circumstances. We discussed the policy of the office pending the signing of the order. He informed me that it was not the policy of the office to mandate the use of the presumption until the order was signed; but that the actual status of the case and the imminence of the Court's order which undoubtedly would enjoin the use of the presumption was explained to any person inquiring.

On information and belief, he conveyed that policy to all the local officials with whom he spoke.

I also received questions from counsel and officials in several local Social Services offices and I always informed them of the actual status of the case and the inevitability of a Court order enjoining the use of the presumption.

In addition, I checked on the status of the order with Judge Wyatt's chambers on at least two occasions. Furthermore, Mr. Norlander informed me of the results of his telephone calls to chambers.

On December 11, 1974, Mr. Norlander informed me of the denial of assistance to Mr. Yantz and Ms. Hart. However, he said that they had applied for assistance in Orange County. On December 12, 1974, he called again to say that he thought there was a misunderstanding and that Mr. Yantz and Ms. Hart were actually residents of Dutchess County. I corrected the information I had given to Mr. Gruffi.

On December 11, 1974 Mr. Norlander also informed me that it was his opinion that the defendants were bound by the opinion of the Court, without an order. He had suggested this the week before, as well. These suggestions came after both sides had submitted proposed orders. I expressed my disagreement with his interpretation of the opinion.

Affidavit of Amy Juviler.

On December 17, 1974, I was served with a copy of the order of this Court dated December 13, 1974. Notice of the signing of the order was also contained in the New York Law Journal of December 17, 1974.

WHEREFORE, plaintiff's motion for contempt and equitable relief should be denied and defendant Lavine's motion for a stay should be granted.

(Sworn to by Amy Juviler, December 19, 1974.)

Affidavit of Henry Gruffi, in Support of Motion for a Partial Stay.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, individually and on behalf of all other persons similarly situated,

Plaintiffs,

and

DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Intervenors-Plaintiffs,

against

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenors-Defendants.

STATE OF NEW YORK }
COUNTY OF ALBANY } ss.:

HENRY GRUFFI, being duly sworn, deposes and says:

1. I am an Assistant Counsel in the Office of Counsel, New York State Department of Social Services, Albany, New York, and am fully familiar with this proceeding. I make this affidavit in opposition to plaintiff's motion for an order adjudging Abe Lavine and William Eagen, Jr., in contempt.

2. On or about November 12, 1974, this office was informed by a telephone call from Amy Juviler, Assistant Attorney General, that the three-judge District Court had rendered its opinion. The gist of the opinion was related, but a copy of the opinion was not received until November 15, 1974.

3. On November 19, 1974, this office received a copy of the proposed Final Judgment and Order determining Motion for Summary Judgment and a copy of the proposed class action order, as submitted by plaintiffs. The case was discussed by members of Counsel's office and with Mrs. Juviler who was preparing a counter-order. In order to be able to implement the order of this Court as quickly as possible, a memorandum dated November 25, 1974 which indicated the Department's decision to follow the Court's order when it was signed. A copy of the memorandum is attached as Exhibit "A". It had been decided that Mrs. Juviler should not request that the order be stayed so long as it was not retroactive in effect and to the extent that it applied to home relief rather than ADC recipients. A letter dated November 25, 1974 was sent to that effect to Mrs. Juviler, a copy of which is attached as Exhibit "B".

4. On or about December 9, 1974, I received an inquiry from a local Social Service Administrator with reference to the opinion of the Court. I informed him that no order had been signed, but that the order would enjoin the use of

the presumption contained in New York Social Services Law § 131(11), and in 18 NYCRR § 385.7. Before applying the 75 day sanction, the local Commissioner should have evidence that the person voluntarily terminated his employment for the purpose of qualifying for public assistance and a finding that that was the purpose of the voluntary termination.

5. On December 11, 1974, I received a telephone call from Assistant Attorney General Juviler advising that she had received a telephone call from Gerald Norlander, Esq., Legal Aid Society of Westchester County, advising her that the Orange County Department of Social Services had improperly denied public assistance to a party by the name of Yantz and a party by the name of Hart by invoking the provisions of Social Services Law § 131.10 and 18 NYCRR § 385.7 and that he would seek a contempt citation.

I immediately contacted Commissioner Perry of the Orange County Social Services Department and requested that he check his records on the above mentioned applicants and inform me of the circumstances of the case.

6. On December 12, 1974, I was informed by Commissioner Perry's office that they were unable to locate any applicant by the name of Yantz or Hart and requested first names in order to further check the records. I contacted Mrs. Juviler, who informed me that she was just notified that the County involved was Dutchess County and not Orange County, as previously informed.

7. On December 13, 1974, I contacted Dutchess County Department of Social Services requesting information on denial of public assistance to an applicant by the name of Yantz and to an applicant by the name of Hart. I spoke to Howard Swart, Assistant Director, Dutchess County Social Services Department and informed him of the source of this Court's decision; but that an order had not been signed.

Thereafter, I received a reply that a Gladys Hart applied for assistance on November 14 and was denied on November 18 and investigation indicated that she was fired from her position due to insubordination, and excessive use of alcohol. She had been unemployed for 45 days prior to requesting assistance and a 30 day sanction was imposed. Terry Yantz applied on November 22, indicating that the work he had been performing was too hard, he had a disagreement with his employer and that he had a hernia condition. He was requested to bring medical proof of his physical condition, failed to do so and was denied on December 4. He reapplied for public assistance on December 4, still without proof of his physical condition, and was denied on the same grounds on December 5 and a 75 day sanction was imposed. I have been also informed that neither of these applicants had requested a State fair hearing at any time subsequent to denial of assistance.

8. In light of the question as to the scope of the order (See Exhibits "A" and "B") no formal notice of the pending order was sent to the local Commissioner. Since a large volume of administrative material is received by them, a tentative description of this Court's decision would be more confusing than the final order which was expected momentarily.

9. On December 17, 1974, when we received notice of the final order by a telephone call from Mrs. Juviler, a telegram was sent to each of the local Commissioners of Social Services. A copy is attached as Exhibit "C".

10. On December 18, 1974, an Administrative Letter was sent to each of the local Commissioners enforcing the order of this Court. A copy of that Administrative Letter is attached as Exhibit "D".

(Sworn to by Henry Gruffi, December 19, 1974.)

Memorandum to Executive Staff of Department of Social Services, Exhibit "A" to Gruffi Affidavit.

STATE OF NEW YORK DEPARTMENT OF SOCIAL SERVICES

MEMORANDUM
Form DSS-524 (Rev. 11/68)
Formerly BOA-100

TO: Executive Staff DATE: November 25, 1974

FROM: Felix Infausto SUBJECT: Settlement of Order in *Milne* v. *Berman and Lavine, et al.*

It is expected that an order for declaratory judgment will be issued in the near future in the *Milne* case, to the effect that social services officials cannot use the presumption in Social Services Law Section 131.11 that a person who voluntarily terminates employment and applies for Home Relief within 75 days thereafter has terminated employment for the purpose of qualifying for assistance.

The effect of the order will be, at a minimum, that social services officials will be required to *make a finding* that a person who quits his job and applies for HR within 75 days has *in fact* quit for the purpose of qualifying for assistance, before they can deny HR to the applicant. *Local commissioners should be given advance notice of the proposed order* so that they can be prepared to implement it immediately upon issuance by the Court.

In addition, the Court could fashion the order so it applies equally to ADC, and could grant retroactive relief to both HR and ADC applicants. We are opposed to these extensions and the Attorney General intends to ask for a stay of the order pending appeal if these extensions are included; if they are not included, we still intend to appeal the decision, but not ask for a stay.

FI:FEB:mg

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit.

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES

1450 Western Avenue
Albany, New York 12203

November 25, 1974

Mrs. Amy Juviler
Assistant Attorney General
Department of Law
Two World Trade Center
47th Floor
New York, New York

Re: *Milne Order*

Dear Mrs. Juviler:

We have reviewed the proposed "Class Action Order" and "Order Determining Motion for Summary Judgment" in the case of *Milne* v. *Berman and Lavine, et al.* and concur in the language of the proposed Orders as it relates to Home Relief recipients. However, as we have previously discussed with you, we believe that the Order should be redrafted so as not to include ADC recipients in the class or in the summary judgment, since there were, in fact, no ADC recipients among the plaintiffs before the Court in this case.

As you requested, we have reviewed Federal Laws and Regulations relating to sanctions for failure to accept or continue employment, and we refer you to the following provisions:

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit.

Federal Social Security Act, *Section 433(g)* provides that the Setcretary of Labor shall notify the State agency administering ADC when an individual refuses "without good cause to accept employment or participate in a project under a Program established" under the WIN provisions.

Section 402(a)(19)(F) provides that a State may take a sanction (the time limit not provided) if an individual *has been found* to have refused without good cause, to participate in a WIN Program or to have refused without good cause to accept employment.

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
Region II
26 Federal Plaza
New York, New York 10007

June 17, 1974

Mr. Abe Lavine
Commissioner
New York State Dept. of Social Services
1450 Western Ave.
Albany, N. Y. 12203

Re: Submitted 74-15
Codes, Rules, and Regulations

Dear Mr. Lavine,

The captioned subject has been approved for incorporation into your State's Plan with the exception of Regulation 352.7 g (7) the last sentence. This provision stipulates restriction of rental payments contrary to Federal Regulation and therefore not subject to Federal participation.

We have brought this matter to your attention in considering previous submittals.

Should you or members of your staff wish to discuss this matter, Regional office staff is available.

Sincerely,

ELMER W. SMITH
ELMER W. SMITH
Regional Commissioner

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
Washington, D.C. 20201

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN
MATERIAL SOCIAL AND REHABILITATION SERVICE STATE
PLAN PROGRAMS

To: Regional Commissioner
Social and Rehabilitation Service
Department of Health, Education, & Welfare

Transmittal Number: 74-15.

I PROGRAM IDENTIFICTAION (*Same identification as title page of preprinted plan*)

All Federal Programs.

II TYPE OF ACTION SUBMITTED FOR APPROVAL (*Check one and enter effective date*)

☐ New State Plan

☒ Amendment

Effective Date: February 1974.

COMPLETE REMINDER OF PART II IF THIS IS AN AMENDMENT (*Separate transmittal for each amendment*)

Federal Regulation Citation I.

NUMBER OF THE PLAN SECTION OR ATTACHMENT

As Indicated.

NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT

As Indicated.

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit.

SUBJECT OF AMENDMENT

Official Compilation Codes, Rules and Regulations of the State of New York. Supplement #2, February 1974.

III GOVERNOR'S REVIEW (*Check one*)

☐ Governor's office reported no comment

☐ Comments of Governor's office enclosed

☐ No reply received within 45 days of submittal to Governor's office

Signature of State Agency Official: ABE LAVINE.

Title: Commissioner.

Date: April 30, 1974.

Return to: (Illegible)

NYS Department of Social Services
1450 Western Avenue
Albany, New York 12203

REPORT OF SRS APPROVAL

Date received in Regional Office: May 8 1974. Region: II.

Plan approved—one copy attached.

Signature of Regional Official: (Illegible).

Title: Regional Commissioner.

Date: 6/19/74.

Welfare: Approved with the exception of Regulation 352.7 g (7).

Letter From Department of Social Services to Amy Juviler, Exhibit "B" to Gruffi Affidavit.

§ 385.6 Determination of refusal to accept manpower services and certification.

(a) A person required to accept manpower services and certification under this Part shall be deemed to have refused to accept such services as required and if an applicant, his application shall be denied, or if a recipient, his assistance shall be terminated if he, without good cause:

(1) as an applicant fails to report to the State Employment Service and file with the social services official the proper certification that he has reported within the semi-monthly period prior to the application; or as a recipient, fails to obtain and file with the social services official the power verification that he has reported on a semi-monthly basis for the manpower services and certification of the State Employment Service;

(2) fails to report to the State Employment Service for an interview with respect to employment or training when requested to do so by such office;

(3) fails to accept referral to employment or to report to such office the results of a referral;

(4) fails to accept employment or training;

(5) fails to report for employment or training;

(6) fails to continue in employment or training;

(7) voluntarily reduced his earning capacity;

(8) fails to accept referral to, report to or participate in work relief on a public work project.

(b) In determining whether a person has refused without good cause to accept employment, a social services official shall take into consideration the report of the State Employment Service, employment agency or prospective employer, the explanation provided by the applicant or re-

cipient for not accepting the offer of employment and any other pertinent evidence.

(c) A person shall be deemed not have refused without good cause to accept employment if evidence shows that:

(1) the job offer was not bona fide;

(2) the salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation or hours or conditions of work offered are substantially less favorable to the applicant or recipient than those prevailing for similar work in locality;

(3) a strike, lock-out or other industrial controversy was in progress at the place in which employment was offered;

(4) the acceptance of such employment would either require the applicant or recipient to join a company union or resign from or refrain from joining any bona fide labor organization;

(5) the job would have been hazardous to the applicant's or recipient's life or health, or there was an absence, if appropriate, of workmen's compensation;

(6) the place of employment was an unreasonable distance from the applicant's or recipient's home;

(7) transportation by public carrier or by private means between the applicant's or recipient's home and the place of employment was unavailable;

(8) child care plans were temporarily disrupted making it impossible for the applicant/recipient to report as required; or

(9) temporary and verified illness incapacitated the client.

HISTORICAL NOTE

Sec. repealed, new filed: Dec. 9, 1969; Aug. 2, 1971; renum. 385.7, new sec. added by renum. 385.5, filed Mar. 2, 1972; amd. filed Nov. 1, 1972; repealed, new filed Nov. 9, 1973 eff. Nov. 9, 1973.

DECISIONS

1. Refusal to accept employment—strikers

Held that strikers may lawfully obtain public assistance since such persons do not by the mere fact they are on strike "refuse" employment (Social Services Law, § 181, subd. 4; [18 NYCRR 385.5]). *Lascarls* v. *Wyman,* 31 NY 2d 386 (1972) affg. 38 AD 2d 163 (1972).

2. Failure to report for interview

Determination of State Commissioner of Social Services affirming determination of City Commissioner of Social Services suspending petitioner's public assistance grant for failure to attend an employment interview held five miles outside the city of his residence due to an alleged lack of transportation, affirmed. Public assistance must be suspended when a recipient willfully fails to report for an employment interview when requested to do so (Social Services Law, § 131, subd. 4; 18 NYCRR 385.6[a][3]). Failure to attend an interview is not willful, however, if no public or private means of transportation is available (18 NYCRR 385.6[c][7]). The record establishes that public transportation was available and petitioner admitted he made no effort to obtain private transportation. *Matter of Shaw* v. *Wyman,* 40 AD 2d 884 (1972).

385.7 Sanctions. (a) A person who:

(1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof; or

(2) without good cause fails or refuses to undergo a necessary medical examination or treatment; or

(3) is required under this Part to receive manpower services and certification and without good cause fails or refuses to accept manpower services and certification; or

(4) is required under this Part to pick up his check semi-monthly at the State Employment Service and without good cause fails or refuses to do so; or

(5) without good cause fails or refuses to accept referral to and participate in a vocational rehabilitation program,

shall be disqualified from receiving assistance for 30 days thereafter and until such time as he is willing to comply with the requirements of this Part, except that an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter until such time as he is willing to comply with the requirements of this Part.

(b) Any person who applies for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such or larger amount thereof in the absence of evidence to the contrary supplied by such person.

(c) In the event a person is subject at the same time to the requirements of this Part and the requirements of the WIN program, the requirements of the WIN program

shall take priority, and where a sanction is required to be imposed against a person under this Part and the WIN requirements, the WIN sanction shall be imposed.

HISTORICAL NOTE

Sec. amd. filed Jan. 2, 1963; repealed, new filed June 9, 1964; amd. filed Dec. 9, 1969; repealed, new filed Aug. 2, 1971; renum. 385.8, new sec. added by renum. 385.6, filed Mar. 2, 1972; repealed, new filed Nov. 9, 1973 eff. Nov. 9, 1973.

385.8. Financial aid to persons to obtain occupational or vocational training or employment in another district. (a) To enable a recipient to accept employment available in another social services district within the State in fulfillment of a plan for self-support, an allowance for the recipient's maintenance may be provided, if necessary, until the recipient receives earnings which will permit him to be self-supporting.

(b) A plan for relocation shall be approved only after verification of the employment opportunity and pertinent information obtained about the wage rate, date and amount of first pay, living conditions and the possibility of transportation being provided by the employer or as a advance on wages.

Telegram to Local Commissioners of Social Services, Exhibit "C" to Gruffi Affidavit.

WESTERN UNION
SENDING BLANK

Call Letters FBL Charge to Social Services

(To all persons on attached list)

We have been informed by Assistant Attorney General, Amy Juviler, that the U.S. District Court for the Southern District of NY, issued a judgment on 12/13/74 which is now effective declaring quote that the presumption contained in the second sentence of New York Social Services Law, Sec. 131(11) (McKinney Supp. 1974), and in 18 N.Y.C.R.R. 385.7, that persons who voluntarily terminated their employment within the 75 days preceding their application for Home Relief or Aid to Needy Families with Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution quote, and permanently enjoining the enforcement of the provisions mentioned. You will please abide by this direction of the Court. Further instructions will follow.

Felix Infausto

Deputy Commissioner, Legal Affairs
New York State Department of Social Services

Administrative Letter to Local Commissioners, Exhibit "D" to Gruffi Affidavit.

DEPARTMENT OF SOCIAL SERVICES
1450 WESTERN AVENUE
ALBANY, NEW YORK 12203

ABE LAVINE
COMMISSIONER

ADMINISTRATIVE LETTER

TRANSMITTAL NO.: 74 ADM-181

DATE: December 18, 1974

To: Commissioners of Social Services

SUBJECT: Sanctions for Voluntarily Terminating Employment
Milne, et al vs. Lavine, et al

SUGGESTED DISTRIBUTION: All Public Assistance Staff

As the telegram of December 17, 1974 advised, a three-judge United States District Court for the Southern District of New York entered a Judgment on December 13, 1974, effective immediately, declaring

> "that the presumption contained in the second sentence of New York Social Services Law, Sec. 131(11) (McKinney Supp. 1974) and in 18 N.Y.C.R.R. § 385.7, that persons who voluntarily terminated their employment within 75 days preceding their application for Home Relief or Aid to Needy Families with Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance, violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution"

Administrative Letter to Local Commssioner,
Exhibit "D" to Gruffi Affidavit.

and permanently enjoining the enforcement of the presumption contained in the mentioned law and regulation.

As you were also advised in the telegram, this Administrative Letter is issued to provide further instructions in regard to the District Court judgment.

We have been advised by Amy Juviler, the Assistant Attorney General who is handling the case, that all decisions made after December 12, 1974 to deny, discontinue or reduce public assistance to a person on the presumption that the person voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for aid to dependent children or home relief or a larger amount thereof should be rescinded and without reliance on such presumption, an appropriate decision made on the basis of fact. This means that you are required to make a finding that a person who quits his job and applies for ADC within 30 days or HR within 75 days thereof has *in fact* quit his employment for the purpose of qualifying for such assistance or a greater amount thereof.

We have requested the Assistant Attorney General handling this case to appeal the decision and to ask for a stay of the judgment pending the hearing of the appeal. We will keep you advised of any further developments in the case.

THOMAS H. KILCOYNE
Deputy Commissioner

Affidavit of Barbara Mankes, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

MILNE, et al.,
Plaintiff,
—against—
BERMAN, et al.,
Defendant.

BARBARA MANKES being duly sworn deposes and says:

1. I am 29 years old and reside at Belvedere Road, Blenham, County of Dutchess, New York.

2. From November 7 to November 26 I worked at the Four Corners Diner, Fishkill Avenue, Beacon, New York, as a waitress.

3. On November 26 my employer Frank Horpolis told me that I was fired.

4. I repeatedly asked Mr. Horpolis why he was firing me, but he would not tell me.

5. On November 28, 1974, I applied for public assistance with the Dutchess County Commissioner of Social Services. I received a predetermination grant of $76.00 on December 4, 1974.

6. On December 14, 1974, I received a letter from the Dutchess County Department of Social Services stating that my grant was discontinued on the ground I voluntarily terminated my employment with Four Corners Diner. (Discontinuance letter is attached and marked Exhibit A.)

7. Upon information and belief the reason for my denial is the Dutchess County and State Social Services Department's enforcement of N.Y. Soc. Serv. Law § 131 (10) (McKinneys Supp. 1973) and 18 NYCRR § 385.7 which create a presumption that my termination of employment was for the purpose of qualifying for public assistance.

8. I did not terminate my employment in order to qualify for public assistance.

9. Upon information and belief, William Eagen, Dutchess County Commissioner of Social Services, agent of State Commissioner Abe Lavine, has actual notice of this Court's decision in *Milne* v. *Berman*.

10. A true copy of the November 11, 1974, *Milne* opinion was served on Howard Swart, Assistant Director of Social Services.

11. In addition to my own application for public assistance, several attempts to obtain an informal reconsideration of the Department's discontinuance of my grant have been made by Randolph Tucker of Mid-Hudson Valley Legal Services Project, 50 Market Street, Poughkeepsie, New York.

12. Notwithstanding this fact, the Department continues to insist that its application of the statute and regulations cited in paragraph (7) above is correct.

13. I am presently unemployed and without funds.

14. I have no other means of support or source of income.

15. I authorize the Legal Aid Society of Westchester County to represent me in proceedings before this Court.

WHEREFORE, I pray that the court:

1. Enter an order directing Abe Lavine and his agent, William Eagen, to cease and desist enforcement of New York Social Services Law 131 (10) and 18 NYCRR § 385.7.

2. Award damages in the amount of $200.

3. Award reasonable attorney's fees.

4. Adjudicate Abe Lavine and William Eagen in their individual and official capacities in contempt for failure to comply with this court's order of November 11, 1974.

(Sworn to by Barbara Mankes, December 19, 1974.)

Discontinuance Letter, Exhibit "A" to Mankes Affidavit.

DEPARTMENT OF SOCIAL SERVICES
County Office Building
Poughkeepsie, N. Y. 12601

Telephone 485-9750

WILLIAM J. EAGEN, Jr.
Commissioner

JOHN H. BATTISTONI
Director of Social Services

In Reply, please
refer to: .....

December 13, 1974

NOTICE OF INTENT TO DISCONTINUE PUBLIC ASSISTANCE

Barbara Mankes
P. O. Box 427
Glenham, N. Y. 12527

This is to advise you that this Department intends to DISCONTINUE your public assistance grant on December 31, 1974 for the following reasons(s): You caused the termination of your job at the 4 Corners Diner. You are ineligible for public assistance for 75 days from the date of your termination (12/1/74). You may re-apply for assistance at the end of the 75 days.

You may have a conference at this department to review your case at any time before the proposed date of discontinuance of your grant.

PETER F. GILMOUR
(Signed)
PFG/mll

Dec. 13, 1974
(Date)

Dicontinuance Letter, Exhibit "A" to Mankes Affidavit.

RIGHT TO FAIR HEARING

If you believe that your assistance should not be discontinued, you may request a state fair hearing by telephoning 212-488-6550 or by writing to Fair Hearing Section, New York State Department of Social Services, 1450 Western Avenue, Albany, New York 12203. If you request a fair hearing, a notice will be sent to you informing you of the time and place of your hearing. At the hearing, you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why your assistance should not be discontinued as well as an opportunity to question any persons who appear at the hearing and present evidence against you. If you request a fair hearing before the date your assistance is proposed to be discontined, you will continue to receive your assistance unchanged until the fair hearing decision is issued. If you feel that the above decision is incorrect you may request a fair hearing. In order to receive your assistance (unchanged) you must request the fair hearing within 10 days of date of letter or Dec. 22, 1974. Legal services are available through the Mid-Hudson Valley Legal Services Project, 50 Market St., Poughkeepsie, N. Y.

Affidavit of Lowell Swanson, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MILNE, et al.,

Plaintiff,

against

BERMAN, et al.,

Defendant.

STATE OF NEW YORK }
COUNTY OF DUTCHESS } ss.:

LOWELL SWANSON being duly sworn deposes and says:

1. I am 30 years old and reside at Route 52, Stormville, County of Dutchess, New York.

2. For a period of approxmiately one month I was employed at L. and A. Blacksmith Shop, Inc., 100 Prospect Street, Beacon, New York, as a bookkeeper.

3. On November 6, 1974, following an argument between myself and my employer, Luigi DeDominicis, I quit my job.

4. I felt it was impossible for me to continue my job as I had reason to believe my employer was engaging in dishonest and illegal payroll practices and I wished to avoid complicity with this activity.

5. On November 21, 1974, I applied for public assistance with the Dutchess County Commissioner of Social Services

and was denied on the ground that I voluntarily terminated my employment with L. and A. Blacksmith Shop, Inc. (Letter of denial is attached hereto and marked Exhibit A.)

6. Upon information and belief the reason for my denial is the Dutchess County and State Social Services Department's enforcement of N.Y. Soc. Serv. Law § 131 (10) (McKinneys Supp. 1973) and 18 N.Y.C.R.R. § 385.7 which create a presumption that my voluntary termination of employment was for the purpose of qualifying for public assistance.

7. I did not terminate my employment in order to qualify for public assistance, I quit my job to avoid committing acts which I knew to be illegal.

8. Upon information and belief William Eagen, Dutchess County Commissioner of Social Services, agent of State Commissioner Abe Lavine, has actual notice of this Court's decision in *Milne* v. *Berman*.

9. A true copy of the November 11, 1974, *Milne* opinion was served on Howard Swart, Assistant Director of Social Services.

10. In addition to my own application for public assistance and a subsequent visit to the Dutchess County Social Services Department, I requested and was granted a Fair Hearing on December 17, 1974, contesting the denial of public assistance to me.

11. At this hearing my representative, Randolph Tucker of Mid-Hudson Valley Legal Services Project, requested reconsideration of the Department's denial of my application based on the *Milne* opinion.

Affidavit of Lowell Swanson.

12. The hearing officer, William Meyers, stated that the *Milne* opinion applied only to the actual plaintiffs and was therefore not applicable in my case.

13. I was not employed at the time of my application and I was without funds.

14. I was not able to find employment until December 3, 1974. Since that time I have been employed selling Christmas trees on a part-time basis.

15. During the twelve days between November 21 and December 3, 1974 I was without funds and was forced to subsist on ten dollars borrowed from a friend.

16. I authorize the Legal Aid Society of Westchester County to represent me in proceedings before this Court.

WHEREFORE, I pray that the Court:

1. Enter an order directing Abe Lavine and his agent William Eagen, to cease and desist enforcement of New York Social Services Law 131 (10) and 18 N.Y.C.R.R. § 385.7.

2. Award damages in the amount of $100.

3. Award reasonable attorney's fees.

4. Adjudicate Abe Lavine and William Eagen in their individual and official capacities in contempt for failure to comply with this Court's order of November 11, 1974.

(Sworn to by Lowell Swanson, December 17, 1974.)

Letter of Denial of Assistance, Exhibit "A" to Swanson Affidavit.

DUTCHESS COUNTY
DEPARTMENT OF SOCIAL SERVICES
County Office Building
Poughkeepsie, N. Y. 12601

Telephone 485-9750

In reply, please refer to: .....

November 26, 1974

Lowell Swanson
Route 52
Stormville, N.Y. 12582

Dear Mr. Swanson:

Your application for Home Relief under the provisions of the Social Welfare Law, has been thoroughly investigated and the facts given careful consideration. Your application for this form of assistance has been denied for the following reasons: You terminated your employment at L&A Blacksmith of your own choice and this makes you ineligible for assistance for 75 days.

We enclose a printed folder for the purpose of informing you of the provisions of the Social Welfare Law and of your rights and obligations thereunder. Legal services are available through the Mid-Hudson Valley Legal Services Project, 50 Market St., Poughkeepsie, N.Y.

Very truly yours,

William J. Eagen, Jr.
Commissioner

FK/mll
enc.

John H. Battistoni, III
Director

Supplemental Affidavit of Gerald A. Norlander, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, et al.,

Plaintiffs,

against

LEONARD BERMAN, et al.,

Defendants.

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss:

GERALD A. NORLANDER, being duly sworn, deposes and says:

1. I am an attorney at law duly authorized to practice before this Court. I am of counsel to The Legal Aid Society of Westchester County, attorneys for the plaintiff class in this action, and I am fully familiar with the facts and prior proceedings in this case.

2. I make this supplementary affidavit in support of plaintiffs' motion, to inform the Court of further instances of conduct on the part of defendant Lavine and his subordinates that plaintiffs contend are in contempt of this Court's prior orders.

A. *The Tompkins County Cases*

3. On or about December 6, 1974, I received a telephone call from Ms. Nancy Bereano, a volunteer worker at the

"Store Front", a community service agency in Ithaca, New York, who advised me of the continued application of the provisions of Section 131(11) of the New York Social Services Law enjoined by this Court, by the Tompkins County Department of Social Services, against Mr. John Hepler. I supplied a copy of this Court's decision to Ms. Beneano, and to Cornell Legal Aid, Myron Taylor Hall, Ithaca, New York, at their request.

4. Upon information and belief, the Tompkins County Department of Social Services continues to apply the provisions of Section 131(11) of the New York Social Services Law, even after this Court's order was made known to Gloria H. Rosenberger, Welfare Employment Representative, Elizabeth Morris, Head Examiner, and Linda M. Stickler, Principal Examiner, employees of that agency, who denied aid pursuant to instructions received from other agents of defendant Lavine. These three persons signed a letter addressed to Ms. Bereano, dated December 6, 1974, which states, in pertinent part:

> "Tompkins County Department of Social Services has not received notification from the New York Department of Social Services in Albany regarding a change in regulation 385.7, Bulletin 26 since the 75 day penalty has been deemed unconstitutional by a 3-judge panel in Westchester County [sic]".
>
> "Gloria Rosenberger, welfare employment representative, received a telephone call on November 15, 1974 from William Diamente, employment specialist from Central Office, Department of Social Services, Albany (518-457-7135), *Mr. Diamente directed Ms. Rosenberger to continue applying 75 day and 30 day sanctions, when applicable, until an administrative letter is sent* to the Tompkins County Department from Albany to do otherwise."

"According to Mr. Diamente, the New York State Department of Social Services is appealing the decision made by Westchester County [sic] judges James L. Oakes, Inzer B. Wyatt, and Dudley B. Bonsal."

A copy of this letter is annexed hereto as Exhibit "A".

5. The affidavits of three members of the plaintiff class, John Hepler, James Maine, and Sherry Murphy, who were disqualified from receiving public assistance by the Tompkins County Department of Social Services since November 11, 1974 due to continued enforcement of the provisions enjoined by this Court have been forwarded to me by Cornell Legal Aid, Myron Taylor Hall, Ithaca, New York, and the Legal Aid Society of Westchester County has been authorized to represent them in this contempt proceeding.

6. I firmly believe that the letter quoted above in paragraph "4", and annexed hereto as Exhibit "A" demonstrates that defendant Lavine has instructed his subordinates to disobey the mandate of this Court issued November 11, 1974, and that his instructions to his subordinates to persist without any change in the enforcement of Section 131(11) of the New York Social Services Law were made in knowing, willful defiance of this Court.

B. *Continued Enforcement in Orleans County*

7. By letter to me dated December 12, 1974, from Stephen Lacher of the Orleans Legal Aid Bureau, Inc., 20A. East Bank Street, Albion, New York, I have been advised that the Orleans County Department of Social Services continued to enforce the provisions enjoined by this Court after November 1, 1974. Mr. Lacher said in his letter,

"The Orleans County Department of Social Services is still applying the 75 day rule *and will continue to do so until formally notified by Commissioner Lavine's office to the contrary.*"

A copy of this letter is annexed hereto as Exhibit "B".

C. *Lavine's Actions Since This Contempt Proceeding Was Begun*

8. Upon information and belief, based upon statements made to me by his counsel, Amy Juviler, Esq., after this Court entered a Final Judgment December 13, 1974, and after this contempt proceeding had been commenced, defendant Lavine notified his subordinate County Commissioners on December 17, 1974 to cease enforcing the enjoined provisions effective December 13, 1974.

9. Upon information and belief, defendant Lavine has taken no steps whatsoever to remedy the contemptuous denial of aid to members of the plaintiff class who were denied aid under the enjoined provisions after November 11, 1974, and he has failed to take adequate steps to assure the future compliance by his subordinates with the Court's injunction.

WHEREFORE, I respectfully request that plaintiffs' motion be granted.

(Sworn to by Gerald A. Norlander, December 18, 1974.)

Letter From Tompkins County Department of Social Services to Nancy Bereano, Exhibit "A" to Norlander Supplemental Affidavit.

TOMPKINS COUNTY DEPARTMENT OF SOCIAL SERVICES
108 East Green Street—Ithaca New York 14850—
(607) 273-9050

Nancy Bereano
Store Front
140 West State St.
Ithaca, NY 14850

December 11, 1974

Dear Ms. Bereano:

Tompkins County Department of Social Services has not received notification from the New York Department of Social Services in Albany regarding a change in regulation 385.7, Bulletin 26 since the 75 day penalty has been deemed unconstitutional by a 3-judge panel in Westchester County.

Gloria Rosenberger, welfare employment representative, received a telephone call on November 15, 1974 from William Diamante, employment specialist from Central Office, Department of Social Services, Albany (518-457-7135). Mr. Diamante directed Ms. Rosenberger to continue applying 75 day and 30 day penalties, when applicable, until an administrative letter is sent to the Tompkins County Department from Albany to do otherwise.

According to Mr. Diamante, the New York State Department of Social Services is appealing the decision made by Westchester County judges James L. Oakes, Inzer B. Wyatt, and Dudley B. Bonsal.

GLORIA H. ROSENBERGER
Gloria H. Rosenberger
Welfare Employment Representative

Approved by:

ELIZABETH MORRIS
Elizabeth Morris, Head Examiner

LINDA M. STICKLER
Linda M. Stickler, Principal Examiner

Letter From Stephen Lacher to Gerald A. Norlander, Exhibit "B" to Norlander Supplemental Affidavit.

ORLEANS LEGAL AID BUREAU, INC.
20A East Bank Street
Albion, New York 14411
Telephone (716) 589-5628

December 12, 1974

Gerald A. Norlander
The Legal Aid Society of Westchester County
56 Grand Street
White Plains, New York 10601

Re. *Milne vs. Berman*

Dear Gerry:

Please advise us of the present status of *Milne*. If there is a final judgment please forward us a copy and inform us whether or not a stay has been granted to the Defendants. The Orleans County Department of Social Services is still applying the 75 day rule and will continue to do so until formally notified by Commissioner Lavine's office to the contrary.

We would welcome any suggestions you may have as to the most expedient way we can make the *Milne* victory a reality to our clients.

We look forward to hearing from you soon and remain,

Very truly yours,

STEVE
Stephen Jay Lacher

SJL:mbw

Affidavit of John Hepler, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ 5397

Ronald Milne, individually and on behalf of all persons similarly situated,

Plaintiff,

and

Douglas Streeter, Robert C. Lee, Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, by their mother and next friend, Roberta Beverly, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

v.

Leonard Berman, individually and as Commissioner of the Westchester County Department of Social Services, and Abe Lavine, individually and as Commissioner of the New York State Department of Social Services,

and

George E. Boisvert, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

STATE OF NEW YORK }
COUNTY OF TOMPKINS } ss.:

Affidavit of John Hepler.

John Hepler, being being duly sworn, deposes and says:

1. He resides at Scribner's Trailer Park, Route 96, County of Tompkins, State of New York.

2. He is destitute and applied for public assistance from the Tompkins County Department of Social Services on or about December 6, 1974.

3. At that time, he was denied assistance and informed that he would not be eligible for public assistance until 75 days had expired from the time he had terminated his employment on or about November 15, 1974.

4. On information and belief, your deponent was denied public assistance under the second sentence of Section 131 (11) of the New York Social Services Law which has been declared unconstitutional.

5. Your affiant did not voluntarily terminate his employment or reduce his earning capacity for the purpose of qualifying for public assistance; since he and his wife were having severe marital problems, he needed to terminate his employment in order to have someone in his home to care for his three children.

6. Since that time, he has left the marital residence at his wife's request.

7. He is without funds, unable to provide for his minimal needs, and therefore suffering harm and injury.

8. He has authorized the Legal Aid Society of Westchester County to appear for him in this matter as a member of the plaintiff class.

Affidavit of John Hepler.

WHEREFORE, your affiant requests that an order be entered herein.

1. Directing Robert J. Wagner as Commissioner of the Tompkins County Department of Social Services and an agent of Abe Lavine, the Commissioner of the New York State Department of Social Services, to forthwith provide your affiant with assistance retroactive to the date of your affiant's application for such aid.

2. Adjudging Abe Lavine, Commissioner of the New York State Department of Social Services, to be in contempt of the order of this court.

3. Granting your affiant such damages and penalties as may be just and proper.

(Sworn to by John Hepler, December 16, 1974.)

Affidavit of James Maine, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ 5397

RONALD MILNE, individually and on behalf of all persons similarly situated,

Plaintiff,

and

Douglas Streeter, Robert C. Lee, Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, by their mother and next friend, Roberta Beverly, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

v.

LEONARD BERMAN, individually and as Commissioner of the Westchester County Department of Social Services, and ABE LAVINE, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

GEORGE E. BOISVERT, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

STATE OF NEW YORK
COUNTY OF TOMPKINS } ss.:

Affidavit of James Maine.

James Maine, being duly sworn, deposes and says:

1. He resides at 531 South Meadow Street in the City of Ithaca, County of Tompkins, State of New York.

2. He is destitute and applied for public assistance from the Tompkins County Department of Social Services on or about December 11, 1974.

3. At that time, he was denied assistance and informed by Russell Kelchner, an employee of the Tompkins County Department of Social Services, that your affiant would not be eligible for public assistance until 75 days had expired from the time his employment had been terminated.

4. On information and belief, your deponent was denied public assistance under the second sentence of Section 131(11) of the New York Social Services Law which has been declared unconstitutional.

5. Your affiant did not voluntarily terminate his employment or reduce his earning capacity for the purpose of qualifying for public assistance; he was fired from his position at the Ithaca Gun Company on or about November 24, 1974, for absenteeism.

6. He is without funds, unable to provide for his minimal needs, and therefore suffering harm and injury; he is $90 in arrears on rental payments and fears the possibility of an eviction.

7. He has authorized the Legal Aid Society of Westchester County to appear for him in this matter as a member of the plaintiff class.

Affidavit of James Maine.

WHEREFORE, your affiant requests that an order be entered herein:

1. Directing Robert J. Wagner, as Commissioner of the Tompkins County Department of Social Services and an agent of Abe Lavine, the Commissioner of the New York State Department of Social Services, to forthwith provide your affiant with public assistance retroactive to the date of your affiant's application for such aid.

2. Adjudging Abe Lavine, Commissioner of the New York State Department of Social Services, to be in contempt of the order of this court.

3. Granting your affiant such damages and penalties as may be just and proper.

(Sworn to by James Maine, December 16, 1974.)

Affidavit of Sherry Murphy, in Support of Motion for Contempt.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ 5397

Ronald Milne, individually and on behalf of all persons similarly situated,

Plaintiff,

and

Douglas Streeter, Robert C. Lee, Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, by their mother and next friend, Roberta Beverly, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

v.

Leonard Berman, individually and as Commissioner of the Westchester County Department of Social Services, and Abe Lavine, individually and as Commissioner of the New York State Department of Social Services,

Defendants,

and

George E. Boisvert, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

STATE OF NEW YORK }
COUNTY OF TOMPKINS } ss.:

Affidavit of Sherry Murphy.

Sherry Murphy, being duly sworn, deposes and says:

1. She resides at 706 West Court Street, Cit yof Ithaca, County of Tompkins, State of New York.

2. She is destitute and applied for public assistance from the Tompkins County Department of Social Services on or about October 30, 1974, and again on December 12, 1974.

3. She was denied assistance and informed on or about October 30, 1974, that she would not be eligible for public assistance until 75 days had expired from the time she had terminated her employment; she was again denied assistance on or about December 12, 1974.

4. On information and belief, your deponent was denied public assistance under the second sentence of Section 131 (11) of the New York Social Services Law which has been declared unconstitutional.

5. Your affiant did not voluntarily terminate her employment or reduce her earning capacity for the purpose of qualifying for public assistance; rather than be fired for cause, she terminated her employment with Woolworth's Corporation after an argument with the management.

6. She is without funds, unable to provide for her minimal needs, and therefore suffering harm and injury.

7. She has authorized the Legal Aid Society of Westchester County to appear for her in this matter as a matter of the plaintiff class.

Affidavit of Sherry Murphy.

WHEREFORE, your affiant requests that an order be entered herein.

1. Directing Robert J. Wagner as Commissioner of the Tompkins County Department of Social Services and an agent of Abe Lavine, the Commissioner of the New York State Department of Social Services, to forthwith provide your affiant with assistance retroactive to the date of your affiant's first application for such aid.

2. Adjudging Abe Lavine, Commissioner of the New York State Department of Social Services, to be in contempt of the order of this court.

3. Granting your affiant such damages and penalties as may be just and proper.

(Sworn to by Sherry Murphy, December 13, 1974.)

Affidavit of Gerald A. Norlander, in Opposition to Stay.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, et al.,

Plaintiffs,

—against—

LEONARD BERMAN, et al.,

Defendants.

STATE OF NEW YORK
COUNTY OF WESTCHESTER } ss.:

GERALD A. NORLANDER, being duly sworn, deposes and says:

1. I am an attorney at law, duly authorized to practice in this Court. I am of counsel to the Legal Aid Society of Westchester County, attorneys for plaintiffs and the plaintiff class in this action.

2. On December 17, 1974, this Court issued an order to show cause, returnable December 19, 1974, why defendant Abe Lavine and William Eagen, Jr. should not be adjudged in civil contempt of court for their failure for more than a month to obey the restraining order made by a three-judge panel of this Court on November 11, 1974.

3. On December 17, 1974, after serving the order to show cause for contempt and the papers upon which it was granted upon defendant Lavine's attorneys, I was advised

by Amy Juviler, Esq., of counsel to Louis J. Lefkowitz, attorneys for defendant Lavine that Lavine intended, on the return date of contempt motion, to seek a partial stay of this Court's final judgment entered December 13, 1974, insofar as the judgment affects "ADC" applicants and recipients.

4. This affidavit is submitted in opposition to any stay of the final judgment entered by this Court December 13, 1974.

5. I believe that any application for a stay by defendant Lavine should be denied for the following reasons:

(A) Lavine has made no factual showing that he will suffer irreparable injury unless a stay is granted;

(B) Members of the plaintiff class would suffer great personal injury if a stay were granted. (i) The affidavits of Yant, Hart, Hepler, Maine and Murphy, presently before the Court on plaintiffs motion for contempt, show that great injury, destitution, loss of one's home and hunger arise from Lavine's enforcement of the enjoined provisions; (ii) The affidavits of Milne, Lee, Streeter, the Beverly brothers, Scarfone, Phillips, Reid and Brownlee, before the Court on plaintiffs' motions for summary judgment and intervention, show the substantial harm that plaintiffs suffer due to Lavine's enforcement of the enjoined provisions; (iii) I have seen a destitute person who suffered medically diagnosed acute malnutrition as a result of application of the enjoined provisions, a Mr. Ruffin from New Rochelle, New York; (iv) Mr. Phillips, a developmentally handicapped individual whose affidavit was before the court on motion for summary judgment, was arrested for shoplifting when

he was destitute and without any resources; (v) I have been advised by another attorney of an instance in which a destitute woman, denied aid due to enforcement of the enjoined provisions, engaged in sexual intercourse with a stranger for money to pay for her food and rent; and (vi) I have been advised by another attorney of an instance in which a destitute person denied aid under the enjoined provisions after being fired from his job was then evicted from his home, suffered the loss and ruin of all his personal belongings which were put out on the curb in the rain, and who then suffered a severe nervous breakdown, requiring hospitalization.

(C) Lavine is unlikely to succeed on the merits of any appeal seeking to limit the scope of the plaintiff class because he has made no showing that the enjoined presumption would be any less irrational with respect to ADC applicants. In fact, the initial eligibility standards and benefits for both ADC and Home Relief established under New York Social Services Law § 131-a are similar. Thus, as this Court held at page 8 of its slip opinion, there is no constitutional difference in application of the enjoined provisions to ADC applicants.

(D) The public interest in providing aid to the needy would be promoted by denial of any application for a stay. Further, nothing in this Court's order interferes with the operation of federal and state programs, e.g. New York Social Services Law § 131.4, designed to develop work opportunities for public assistance recipients.

(E) Defendant Lavine's application for a stay of this Court's injunction is a matter addressed to this

Affidavit of Gerald A. Norlander.

Court's discretionary equity jurisdiction, and should be denied because Lavine, by reason of his contempt of this Court's November 11, 1974 order, is not deserving of any award of equitable relief from this Court's final judgment of December 13, 1974.

For all the above reasons, I believe the application for a stay by defendant Lavine to be without any merit.

WHEREFORE, I respectfully request that this Court deny any application made pursuant to Rule 62(c) of the Federal Rules of Civil Procedure by defendant Lavine to the three-judge court for a stay of this Court's final judgment of December 13, 1974.

(Sworn to by Gerald A. Norlander, December 18, 1974.)

Hearing Before District Judge, December 19, 1974.

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

73 Civ. 5397

RONALD MILNE, et al.,

Plaintiff,

and

DOUGLAS STREETER, et al.,

Intervenor-Plaintiffs,

against

LEONARD BERMAN, et al.,

Defendants,

and

GEORGE E. BOISVERT, et al.,

Intervenor-Defendants.

Before: HON. INZER B. WYATT, District Judge.

December 19, 1974
2:30 p.m.

APPEARANCES:

GERALD NORLANDER, Esq., Legal Aid Society of Westchester County, for the plaintiffs.

LOUIS J. LEFKOWITZ, Esq., Attorney General of the State of New York. By: Amy Juviler, Esq., Assistant Attorney General.

HARRY LOTT, Esq., County Office Building. By: Richard A. McAtamney, Esq.

JOHN M. KENNEDY, Esq., County Attorney, Dutchess County, New York for the defendants.

The Court: Now, I have a procedural question before we get to this application and I think perhaps counsel and the Court have been a little careless.

There are so many papers that I haven't gone over them all, of course, and this is now a class action but under what section of the civil rules is it a class action?

Mr. Norlander: 23-C, your Honor.

The Court: 23-C what? 23-C means nothing. 23-C is simply a procedural section.

Ms. Juviler: Your Honor, (b)(2) possibly. I was suggesting (2).

Mr. Norlander: Yes, I'm sorry, (b)(2).

I believe we have in our order—

The Court: Maybe we are not as careless as I had thought. In other words, it is a class action under 23(b)(2).

Ms. Juviler: Yes.

The Court: So, we don't have to worry about notice to the members of the class.

Mr. Norlander: That's correct, your Honor.

The Court: Am I correct?

Mr. Norlander: That is correct.

The Court: So far I am correct.

Then maybe I was wrong in saying that we have been careless but I noticed that until at least the class action order, the pleadings and what we wrote didn't seem to focus and I was concerned about the notice to shareholders.

Mr. Norlander: Your Honor, the order signed does specify that it is under Section (b)(2).

The Court: Yes, I've just looked at it.

Now, the next question is, what is the authority for this so-called notice of appearance of Terry Yantt and Gladys Hart? I've got a thing called Notice of Appearance.

Mr. Norlander: I will explain, your Honor.

Out of an abundance of formality, perhaps, we have made a formal appearance on behalf of these persons as class members seeking specific relief before the Court.

As plaintiffs for the class, we believe that the class is already represented before the Court. These are particular individuals who may need some particular equitable relief at this stage.

The Court: But why shouldn't I strike out the notice of appearance? I mean, we have got enough problems as it is.

I recognize that if it were a (b)(3) class action, then we would have to give notice and the notice would have to state that any member of the class who does not request exclusion may enter an appearance through his counsel. But there is no authority for that except in (b)(3) actions.

Mr. Norlander: We would have no objection to striking it, your Honor.

At page 14 of the Court's opinion, the Court wrote that the proposed intervenors whose applications were denied might, if so advised, enter an appearance through counsel.

The Court: Well, that, then, certainly convinces us of the carelessness, doesn't it?

Mr. Norlander: So, we have entered an appearance. We certainly don't feel that as a formal matter it should

complicate the matters. In fact, since we are representing them as named plaintiffs, all notices to them would come to us and it would really make no practical difference in the service of papers and so forth.

The Court: Well, I think this part of the opinion is probably in error in citing 23C(2)(c), which doesn't apply to a 23(b)(2) case, but since the defendants haven't raised the point, I don't know why I should be troubled by it. We will just leave the papers as they are.

Then, will the movants tell me what they think I ought to know? I have just glanced at the order to show cause and that is about all.

Mr. Norlander: If the Court, please, I am Gerald Norlander from the Legal Aid Society for the plaintiffs.

Before the Court is plaintiffs' motion to adjudicate defendant Abe Lavine and his Dutchess County Commissioner, William Eagen, in contempt of court.

The plaintiffs contend that the Court, sitting as a three-judge panel, made a command to the defendants on November 11th of this year.

The Court said at page 14 of the Slip opinion, after declaring unconstitutional the presumption in Section 131-11 of the New York Social Services Law that "We hereby order that the defendants be and they are hereby enjoined"—

The Court: Where is this?

Mr. Norlander: Page 14, your Honor, at the top of the the page.

The Court: Yes.

Mr. Norlander: "We hereby order that the defendants be and they are hereby enjoined from enforcing the provisions that the Court had declared unconstitutional."

The footnote is indicated there and the footnote says, "Any questions of interpretation of this order or of the order establishing the class other than constitutional questions," may be heard by your Honor sitting and acting for the three judges.

The Court: All right.

Mr. Norlander: Now, we contend, your Honor, that this satisfied the requirements of Rule 65—

The Court: Well, are we meeting here today to decide whether the opinion and order were effective on the date filed or on the date when the formal orders—I mean, is that the whole issue?

Mr. Norlander: There is another issue, your Honor: To urge they have also not complied with the final judgment and we contend that regardless of the finding of contempt here.

The Court: What is the State's position? Is that what I am supposed to be sitting here this afternoon to decide, whether the State should have started complying with the order when this opinion was filed or whether they have to wait until there is a formal order?

Ms. Juviler: Yes, your Honor.

The Court: Well, I am not going to pay any attention to that. I will certainly hold them in contempt for this, and I am thoroughly affronted if that is the State's position.

Ms. Juviler: But, your Honor, if your Honor would hear me.

The Court: I am thoroughly affronted.

Ms. Juviler: If your Honor would hear me.

The Court: You mean in the face of this direction, the State is relying on the technicality that no order had been settled as required by the last paragraph of the opinion?

Ms. Juviler: Yes, your Honor, and the reason is, it was not in contempt of the Court's decision but because the only thing the State could do in response to an order of the Court was to mandate the localities to disregard a statute. And in order to do that, the Commissioner himself must

be mandated. He has no discretion to order the local commissioners not to obey a statute.

We have papers to submit which will show to you that we tried to run a middle ground during the period that the order was pending and to advise the local agencies that the order would inevitably prohibit the enforcement of that section, of that sentence of the section at issue, 131-11.

But we could not mandate or at least it was determined by counsel and the Commissioner that he could not mandate the local commissioners until he, himself, received an order.

We do not take the position in this proceeding as to the individuals affected during the interim period but we do say that we did not send a notice but we were prepared immediately to send a notice when the order was signed. We did so and the administrative letter has also been issued.

The Court: Well, tell me, Mr. Norlander, what is it that you want? Do you want some flick on the wrist because they didn't comply during this period? I mean we have got to get on with this thing and I can't spend my whole judicial career on this case, I may add.

What is it you want?

Mr. Norlander: Your Honor—

The Court: I am not going to put them in jail.

Mr. Norlander: We are not asking for that.

The Court: What is it you want me to do?

Mr. Norlander: We take very seriously the obligation to represent the class. Many members of the class were turned away from receiving assistance within the past month. In fact, they may have been turned away as recently as last week and told not to come back for 75 days.

About one year ago, Mr. Milne came to our offices a

desperate man and we made every administrative attempt we could to get him relief and we could not.

We came to the Court and litigated long and hard and the Court rendered a full opinion, gave a lot of consideration here, and here we stand today before the Court, one year later.

The mandate of the Court has been out for a month and we still have people coming to the offices of Mr. Kelly, up in Poughkeepsie, who have been denied aid since November 11th. They have not been given aid and have not been given aid today and, in fact, they remain in need and without aid up there in Dutchess County today and Mr.—

The Court: Is that the only place where—

Mr. Norlander: No, your Honor. Excuse me. We have submitted affidavits today and I have them. I am sorry.

I am about to submit affidavits from Tompkins County, where there are at least three instances in papers sent down from Cornell Legal Aid, indicating that they are continuing to enforce the law unchanged up there, or that they did during the month of November.

The Court: Wait. I am taking it one step at a time.

Mrs. Juviler tells me that she or her colleagues or some lawyers advised the State officials that they didn't have to pay any attention to this order until it was formally signed, it had been settled and it took us quite some time to do that.

Now, during that period, while I think it is outrageous, the conduct of the State, I cannot put the respondents in jail because they followed the advice of counsel.

So, I deny any application to put them in jail during that period.

Now, can we move on to the next thing that you are after?

Mr. Norlander: We seek full remedial relief from the contemptuous acts. The law is clear that—

The Court: Contemptuous acts since when?

Mr. Norlander: Since November 11th.

The Court: No. Since the date of the final order.

Mr. Norlander: Actually—

The Court: I cannot find these people in contempt if they followed what I am told was the advice of their lawyers.

Mr. Norlander: Your Honor, I think—

The Court: I think it is an outrageous performance but I cannot put them in jail for contempt because they followed the advice of members of the Bar, so let's get on to something else.

Mr. Norlander: Well, your Honor, we do believe that every person wrongfully disqualified during that period should at least receive a letter from the Social Services officials advising them that the denial was contrary to this Court's order and advising them of their right to immediately come in and have their application considered.

The Court: Yes, that relief will be granted. That is granted.

All right.

Mr. Norlander: We believe that in the cases in the affidavits submitted before you, in the cases of Yantt and Hart, that those people have suffered at least $200 damages by reason of the denial of aid.

The Court: If we send this to a special master, can't the special master take evidence about what the damages are?

Mr. Norlander: Certainly he could.

The Court: Then why should I just pick an arbitrary figure of $200?

Mr. Norlander: Well, I think your Honor is quite correct, it should go to a special master.

The Court: I don't think that I can do that. The $200 would be a fine for contempt, wouldn't it?

Mr. Norlander: I think, your Honor, that a contempt finding could be granted in this situation. It is civil contempt. In civil contempt, it is not a defense that one acted upon the advice of counsel or the advice of a superior. All that need be shown is violation of the Court's order and knowledge of it.

They concede in their affidavits they knew about—

The Court: No. I won't find the State officials on this state of the record.

Mr. Norlander: Well, your Honor, I do call to your attention that there are only—

The Court: I will require them to give the notice to which you referred and in an order to be submitted, you can provide for that. All right.

Now, since the date of the formal orders of the Court, what have been the violations?

Mr. Norlander: On the 17th of December, the same day that your Honor signed the order to show cause here, up in Dutchess County—

The Court: Had the order been served on the officials?

Mr. Norlander: It was served on the 17th also.

At a fair hearing, people from Mr. Kelly's office served upon a hearing officer of the State Department of Social Services, a copy of this Court's opinion containing the order. They had a fair hearing—

The Court: Wait.

Mr. Norlander: This is a new affidavit, your Honor.

The Court: But is this the order that we finally signed?

Mr. Norlander: No, not the final order, your Honor.

The Court: Well, I thought I passed on that. I am willing to say that on the advice of counsel until they were notified of the entry of the final order, they don't get found in contempt.

Mr. Norlander: Well, we do think, your Honor, that after entry of the final order they should not have denied aid to the persons who have been—

The Court: When were they notified of it?

Mr. Norlander: The State was notified—

The Court: The officials.

Ms. Juviler: Your Honor, can I interrupt?

The Court: No. Let me find out what it is I am being asked to do.

I am trying to figure out, what relief do you want for offenses committed by the State officials after they were notified of the entry of the order of the three-judge court?

Mr. Norlander: You are talking about the final judgment or the November 11th?

The Court: Final judgment, yes.

Mr. Norlander: We believe, your Honor, that the State should inform all of the local commissioners that they should review their applications to determine whether or not there are any people who are still disqualified. In other words, persons whose 75 days have not yet run.

The Court: All right. I'll grant that relief. You can submit an order on that.

Ms. Juviler: Your Honor, may I be heard? We have already done that in an administrative letter appended as Exhibit D to our affidavit.

The Court: All right. Then it won't hurt.

Mr. Norlander: They should also be notified, your Honor, to make payments to such persons upon a showing of eligibility retroactive to—

The Court: Why should I do that? All I am trying to do is to see that the State officials don't deem them disqualified within a 75-day period because they applied during that period.

I am not going to order them to make payments; certainly not.

Mr. Norlander: Let me reframe it this way, your Honor:

We are not asking you to order payments. We are asking you to order them to consider the applications without reference to the presumption.

The logical outcome of that is that they should be paid if eligible from the date of their application.

The Court: No. That is having me make an affirmative order. We have already made an order that they cannot use the second sentence of the statute.

Now, after that, I've got to give them some administrative leeway. I can't order them to make payments.

Mr. Norlander: Well, your Honor, we also submit that the defendants really should have come to this Court for an interpretation had they had any doubt as to whether an order had been issued on November 11th and the necessity and the cost of preparing this motion, a fine or award of attorneys' fees would be appropriate even in the absence of the finding of contempt.

The Court: Well, Mr. Norlander, look, it is a very delicate area, the Federal-State collision over these problems, and I see no reason for us to irritate the relationship further.

You have won your point and I am willing to see, to the limit of my ability, that as a practical matter they comply with our order and while I think Mrs. Juviler and her colleagues were woefully ill-advised in the advice that they gave their clients, nevertheless they did.

They are reluctant people. They believe still they are right and maybe they will take our decision to the Supreme Court and prove that they are right, for all I know.

But it is not a practical thing for me as a federal judge to be interfering unnecessarily in the details of the administrative business of the State officials.

Mr. Norlander: Your Honor, we certainly agree that in an ordinary instance that should be the case and, indeed, here in framing the final judgment, we have avoided specifying what action should be taken by the defendants, leaving to them the administrative operation of enforcement.

The problem is that in past cases, and again here the same defendant Lavine, who has been in this court a number of times, is again dragging his feet, taking token action and is not fully complying with the Court's orders and we feel that—

The Court: He is a firm believer in State's rights.

Mr. Norlander: Your Honor, we are a firm believer in the rights of our clients to be free from an unconstitutional denial of aid.

The Court: But you have won your point.

Mr. Norlander: Not the clients'. This perhaps was a very interesting decision but it means nothing to people who come to our offices again and seek aid and we speak all day on the telephone and can't get any aid for them whatsoever because of the enforcement of the law.

The Court: You mean since the State officials—when was our final judgment given?

Mr. Norlander: The 13th, served on the 17th.

The Court: You mean since December 13th, you have clients against whom the State officials have enforced this presumption?

Mr. Norlander: Your Honor, yesterday afternoon, I spoke with Mr. Kapulski from Cornell Legal Aid. He represents three persons whose affidavits I have with me today and I would submit them.

As of 4:00 p.m. yesterday afternoon, none of his clients had received aid. He had talked to his local commissioner up there who denied receiving a telegram from the State.

Mr. Kelly is from the Mid-Hudson Valley Legal Services Project and he had occasion to talk just this morning with a person in Dutchess County who still had not had complete instructions from Albany, and I will ask him to relate—

The Court: But are those things part of this order to show cause?

Mr. Norlander: Well, I think not, your Honor, in the sense that we didn't know at the time we started the order to show cause that the final judgment had been signed.

The Court: Well, I have to give the State a chance to look into this. You may be completely right—

Mr. Norlander: They are the same persons, your Honor, upon whose affidavits the order to show cause was made. They were denied in that interim period between November 11th and December 13th, and they are still denied today.

That is the point I am trying to make, your Honor.

The Court: Now, wait. I thought we were talking about —these are specific instances, now, since December 13th?

Mr. Norlander: Well, they were denied before December 13th and they have still not received aid today and the Dutchess Department of Social Services was contacted today in connection with the applications.

The Court: But I can't sit here, can I, and say that if a person applies, he or she has to get relief? You mean it is automatic?

Mr. Norlander: Well, no. Your Honor, we believe that the only basis, the only stated basis for denial of these persons was quit job, quit job voluntarily. Those are the facts that triggered the presumption. That was the only basis stated for denial.

The Court: Suppose they did in fact quit their jobs in order to get public assistance?

Mr. Norlander: Then the notice should have said so and the notices do not.

The Court: I am not going to rule on the technicalities of the notice.

Well, we have gotten two forms of relief that you have asked for. You want two letters to go out from the State and I've agreed to that.

Now, I am trying to get specific and I ask you, after notice to the State officials, you say on December 13th,

against what individuals has the presumption been enforced?

Now, we will take them one-by-one and just give me the names.

Mr. Norlander: Well, your Honor, that was just on Tuesday of this week that we actually learned of the signing of the final judgment. The affidavits before the Court are of persons who were denied before the final judgment was signed—

The Court: As I say, I am not willing to get into that.

Mr. Norlander: All right. Then, well, as to those persons, will the Court direct that they be allowed to reapply and have their applications considered without reference to the presumption, retroactive to the date of the first application?

The Court: Well, is it consistent with State law that that be done?

Mr. Norlander: Oh, certainly.

Ms. Juviler: Consented.

Mr. Norlander: Any error can be rectified under State regulations by a caseworker within two months and, actually, the regulation empowers four months.

Ms. Juviler: I consent to it.

The Court: There is nothing unfair about that.

Ms. Juviler: I consent to it.

The Court: All right. That is the third sort of relief that you can have.

In other words, the particular persons are to be notified that they can reapply retroactive to their first application. Don't misunderstand me. All I am trying to do is to stay out of the fact finding, administratively, which is the responsibility of the State and wholly without reference to this presumption.

It could be that the evidence before the State indicated that these people were not eligible for relief during the

75 days, that 75-day period. I am not passing upon that and I certainly don't think that is proper for us, but as far as the presumption is concerned, I'll give you within reason almost anything you want there.

Miss Juviler doesn't contest that. They can reapply retroactive to the date of first application.

Mr. Norlander: I think, your Honor, that it would be appropriate to direct the defendant Lavine to have each of his county commissioners prepare a list of all such persons denied and file a certificate that they have notified such persons because I think that past experience has shown that any time limit set on searching of the files—because some of the people were turned away, as I say, as recently as last week and told not to come back for 75 days and as you will see in my affidavit in opposition to stay, the harm that can come to these people is enormous and I think that it is incumbent upon the defendant to make a prompt notification of each person.

I think that a time limit of—

Ms. Juviler: Can I be heard, your Honor?

The Court: Yes.

Ms. Juviler: I think that it seems that understandably no one has read Exhibit C and D of our affidavit and I would like to refer your Honor to them at this time.

On December 17th when we were notified of the signing of the order, a mailgram was sent to each commissioner of Social Services in the State as follows:

"We have been informed by Assistant Attorney General Amy Juviler that the United States District Court for the Southern District of New York issued a judgment on December 13, 1974, which is now effective, declaring that the presumption contained in the second sentence of New York Social Services Law Section 131-11, McKinnis Sup. 1974, and in 18 NYCRR Section 385.7, that persons who voluntarily terminated their employment within the 75 days

preceding their application for home relief or aid to needy families with dependent children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance violates the due process clause of the Fourteenth Amendment to the United States Constitution, 'and permanently enjoining the enforcement of the provisions mentioned.'

"You will please abide by this direction of the Court. Further instructions will follow."

That was December 17th that was sent.

On December 18th, the following administrative letter was sent to each of the local commissioners:

"As the telegram of December 17, 1974 advised, a Three-Judge United States District Court for the Southern District of New York entered a judgment on December 13, 1974, effectively immediately declaring"—there follows the same quote that we just read—"and permanently enjoining the enforcement of the presumption contained in the mentioned law and regulations.

"As you are also advised in the telegram, this administrative letter is issued to provide further instructions in regard to the District Court judgment. We have been advised by Amy Juviler, the Assistant Attorney General, who is handling the case, that all decisions made after December 12, 1974 to deny, discontinue or reduce public assistance to a person on the presumption that the person voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for aid to dependent children or home relief or a larger amount thereof should be rescinded and, without reliance on such presumption, an appropriate decision made on the basis of fact.

"This means that you are required to make a finding that a person who quits his job and applies for ADC within 30 days or home relief within 75 days thereafter has in fact"—underlined—"quit his employment for the

purpose of qualifying for such assistance or a greater amount thereof."

And there follows:

"We have requested the Assistant Attorney General handling the case to appeal the decision and to ask for a stay of the judgment pending the hearing of the appeal. We will keep you advised of further developments in the case."

May I add parenthetically, because we won't get into it at the moment, the stay is of a limited sort and will not affect the discussion going on here.

The Court: Mr. Norlander, why doesn't that give you the second sort of letter that you asked me to direct the State officials to send out? In other words, they have already sent out notice.

Mr. Norlander: With respect to the December 12th or December 13th final judgment. They have notified them of that judgment satisfactorily. They have not notified them, of course, of any treatment to be accorded to persons denied in the interim period.

The Court: No. Now we are back to one letter. In other words, you want a letter to the persons who were denied assistance telling them that they can reapply retroactively and that is what Miss Juviler consented to.

Mr. Norlander: All right.

The Court: So now we are down to that part of the relief.

Mr. Norlander: I think, your Honor, that it would be advisable to direct the defendant Lavine to submit a copy of his proposed letters to the plaintiffs' attorneys because I see in this administrative letter a sentence that could cause untold complications in the future.

After informing all the workers, all public assistance staff of this Court's decision, they instruct them that this decision means that you are required to make a finding

that a person who quits his job and applies for ADC within 30 days or within 75 days has in fact quit his employment.

Now, your Honor, that is ambiguous to the minds of many social services administrators and I can predict right away that we are going to run into administrators that are going to say that the administrative letter now requires them, instead of presuming it, just requires them to make a finding of fact that a person—

Ms. Juviler: Okay.

The Court: It requires them if they are to deny assistance.

Mr. Norlander: That's correct.

The Court: But surely I can't be editing all the letters that the State officials are going to send out.

Mr. Norlander: That is why I think your Honor should direct him to send the proposed letter to us for comment in this situation.

The Court: What letter?

Mr. Norlander: Subsequent letters relating to enforcement of this Court's order.

The Court: I think that is—

Mr. Norlander: So that we can negotiate. I think Mrs. Juviler here nodded agreement when I pointed this out.

Ms. Juviler: I will be happy to amend this letter but I don't think that I can undertake to have every administrative decision involving this case go to plaintiffs' attorneys.

The Court: No.

Ms. Juviler: That only makes it worse, makes the bureaucracy problem worse. We already have a substantial one.

The Court: Anyway, Miss Juviler, you say you are willing to clear up that ambiguity.

Ms. Juviler: Yes.

The Court: Then let's don't make that part of the order. I mean, I would have, myself, said that that meant that if you are going to deny assistance, you now have to decide the issue of fact but you may be right.

Mr. Norlander: Your Honor, the reaction of persons sitting at the—it is very unfortunate in the Social Services Offices that we tend to get a reaction. Perhaps it is the human reaction that one sees of averting one's eyes from a needy person, the means of averting one's eyes is to invoke a regulation with a sentence, to turn a person away and there should be no ambiguity in this order and I think that we can work that part of it out.

The Court: But I, except to the extent that the respondents consent, would hesitate to order that messages from State officials to their subordinates should be submitted to you for approval.

I am sure you are high-minded and public-spirited but it just seems to me that that is wrong in principle.

Mr. Norlander: Your Honor, I would request, then, that we at least be given immediate notification if any such letters are issued, instead of receiving them late as we often do in our offices.

The Court: You mean put you on the mailing list?

Mr. Norlander: Well, we are on the mailing list but we seem to be at the bottom.

The Court: If you are on the mailing list, then I think that is enough.

Mr. Norlander: All right, your Honor.

The Court: So far, we have gotten one form of relief on your application and that is that the respondents are to send letters to the persons who have been denied assistance that they can reapply retroactive to the date that they first applied.

Now, what else that I haven't passed on, because I want to give you and the State a fair chance.

Mr. Norlander: Your Honor, we have briefed the question of awards of conditional fines and attorneys' fees in this matter. We believe that even if—

The Court: Do those relate to the period before the entry of the order?

Mr. Norlander: Certainly.

The Court: I don't think I can grant that. I am going to deny that.

Mr. Norlander: We call to your Honor's attention the case of Class against Norton, involving a Connecticut welfare commissioner and that case involved a contempt proceeding in which a district judge did not award or find him in contempt.

However, he did award attorneys' fees in order to compensate the plaintiffs' attorneys for the loss of time that they had devoted to the matter and to sanction the defendant from failing to comply with a clear order of the Court.

We believe, your Honor, that it was incumbent upon the defendants to seek the advice of the Court, rather than Abe Lavine to determine for himself what this Court meant.

You will see in the affidavit submitted by the Dutchess County Commissioner that the Commissioner was made aware of this Court's order.

The Court: What affidavit?

Mr. Norlander: I believe it has not been submitted yet by Dutchess County.

Mr. Kennedy: That's correct, I have it here.

Mr. Norlander: The Dutchess County Commissioner contacted defendant Lavine in Albany and they told the Dutchess County Commissioner in effect that the injunction of the three-judge court here would not be effective until Abe Lavine said so and we submit, your Honor, that even if the Court does not find this contumacious conduct, we should be awarded fees just simply as a matter of

equity because this motion really should not have been needed to have been brought.

The Court: Tell me, how is your organization supported?

Mr. Norlander: Your Honor, the Legal Aid Society of Westchester County receives funding from the Federal Office of Economic Opportunities, Legal Services Division.

Now, that is Federal funding that has been devoted to the civil side of the Legal Aid Society in Westchester County. There is also public funding from the United Fund that contributes a local share to the civil budget.

The criminal budget is totally separate and funded by the counties.

The Court: The Criminal Justice Act, too, I suppose, as far as the Federal.

Mr. Norlander: That's correct.

The Court: Suppose I were to grant the relief that you are now asking for. This comes from the State or would it come from these people individually?

Mr. Norlander: Well, your Honor, the Second Circuit looked at that question in the case of Class v. Norton, just decided in October.

In Class against Norton, the district judge specifically found that there was no willful contempt by the welfare officials, yet he nevertheless awarded attorneys' fees against those individuals in both their official and individual capacities.

The Second Circuit affirmed the award of attorneys' fees in an official capacity. They did reverse the award against the respondent officials in their individual capacities.

We submit that the facts of this case were somewhat different and if your Honor perhaps would consider the affidavits submitted by Lavine and his Dutchess County Commissioner, I think that you would agree that their

decision to defy the Court's order was knowing and willful and he absolutely failed to come in here and seek any interpretation.

I think that in this case, an award against them in an individual capacity could be justified.

The Court: Now, wait a minute. What shows that it was willful and deliberate? What am I to look at?

Mr. Norlander: Well, their affidavits, the affidavit of the County Commissioner; perhaps that can be handed up here.

Ms. Juviler: It was.

Mr. Norlander: The Battistoni affidavit in substance says that the Dutchess County officials received a copy of the Court's order, that in connection with the application that upon being served and upon learning of what this Court said, contacted not this Court but contacted Abe Lavine and his people in Albany, and Abe Lavine said that this Court did not mean what it said.

The Court: Tell me where that is. I have the affidavit here.

Mr. Norlander: Your Honor, in paragraphs 7, 8 and 9. And they concede in their affidavit, your Honor, that the denials were made under the presumption.

The Court: I am looking at the Battistoni affidavit. What am I supposed to particularly focus on?

Mr. Norlander: First, paragraph 6. It is a concession that the denials of aid to Yantt and Hart are based on the presumption. They received no formal word—that is in 7. They had a hand-delivered copy.

If you look above that in paragraph 3, they received a hand-delivered copy of this Court's order. They knew what this Court said.

They called Mr. Harrington, a member of the legal staff of Mr. Lavine. Mr. Harrington advised them of the opinion. He confirmed that it, the opinion, I guess, served was one with which the State was involved.

He advised them that it was not legally binding and that they were anticipating the Court would sign the final judgment and, in accordance with that instruction, they instructed their subordinate officers to continue the denial of aid.

Now, we submit, your Honor, that in civil contempt advice of counsel is not a defense and if your Honor please, I would submit a memorandum as to that.

The Court: No. I am not going to impose counsel fees for that mistake.

Mr. Norlander: I think also, your Honor, the affidavits of Mr.—

The Court: It seems to me there is a certain amount of overkill here. If there was some defiance of the Court, that would be different and I think it would have been, as I have indicated, much more appropriate if the State had treated the opinion and order—the opinion filed—as the equivalent of an order but they did not. And, in the context I am simply not willing to enter into this delicate area any further than we already have.

Mr. Norlander: Your Honor, I would point out that in oral argument it was represented that Abe Lavine would comply with whatever this Court said.

The Court: I know, but Miss Juviler would say that she and the other lawyers waited until the order came down signed by the three judges; they had a certain amount of leeway.

Mr. Norlander: Then I really have nothing further except I wish to submit the additional papers and also the defendant has moved for a partial—

The Court: Wait. We will get to that in a moment. I have just noticed that but that is a separate thing.

Mr. Norlander: I have papers in opposition to that.

The Court: All right. But now on your application, do you have anything else to submit?

Mr. Norlander: Yes, I wish to submit these papers.

The Court: This apparently is the original, Mr. Clerk, and that ought to be filed and documented.

This is an affidavit of Barbara Mankes and this is an affidavit of Lowell Swanson, which should be filed and documented. This is a supplemental memorandum of points and authorities. This goes to my law clerk.

Where is the original order to show cause?

This memorandum of law goes back to the files, Mr. Clerk.

Mr. Norlander: Your Honor, would your Honor entertain reserving decision on the question of any fines or attorneys' fees for a matter of, say, two weeks or three weeks so that we may see what compliance is made by the defendants in terms of actually enforcing?

The Court: No. But what I do today is entirely without prejudice to a further application to punish for contempt after we have ventilated it as we have here in open court henceforth.

I want to make it clear that I don't propose to have the State officials ignore the ruling of this Court and your clients, I propose, will not have enforced against them this presumption but a Federal court, it seems to me, must appropriately proceed with caution in what I have described as a delicate area, the relationship between the Federal and State Government.

They are not going to get away with murder but I am not prepared to accept at the moment that they are trying to do that.

I gather from what Miss Juviler read to me that after the entry of the formal orders they have advised all people in the hierarchy and if they don't live up to it, you are perfectly at liberty to come back here and, indeed, I would be much more sympathetic at a subsequent appearance than I seem to be today.

Mr. Norlander: Thank you.

The Court: I don't want to chill your enthusiasm for enforcing the order of the Court by any means, but I am just trying to act cautiously and, therefore, I think I will grant this motion to the extent of the letter and settle an order on that. I want you to have that.

Mr. Norlander: Would your Honor suggest a time limit for them to get these letters out? I think that that is important.

A reasonable time, I think—

The Court: What is practical.

Mr. Norlander: We do have the holiday season but we also have people who may be hungry during this season.

The Court: In these organizations, it takes time. How long, Miss Juviler?

Ms. Juviler: May I have a consultation, your Honor? Can I ask for a clarification from the Court and that is, are these letters to go back retroactive to December 13th? Is that it?

The Court: Yes. To persons denied relief since December 13th. Isn't that it?

Mr. Norlander: No. I was under the impression that you were granting relief for those denied aid since November 11th.

The Court: I think you are right because although I am not finding contempt—I think you are right. It goes back to, what is it, November 17th?

Mr. Norlander: They concede to receiving notice of the Court's order on the 12th of November.

The Court: Is it November 12th?

Ms. Juviler: Yes.

The Court: Then November 12th is the date. And the letter is simply to say that persons who were denied assistance since November 12th can reapply for assistance retroactive to that date.

Is that understood?

Ms. Juviler: Yes, your Honor.

Excuse me just a minute. May I consult to find out—

The Court: Of course, take your time.

(Pause.)

Ms. Juviler: Your Honor, I am informed that the time needed is ten working days.

If I can bring to your Honor's attention one problem area, and I don't have a representative here from New York City, but I have had numerous conversations with the people who administer the program in New York City and I think that the use of this statute is much reduced in New York City over the rest of the State but, nonetheless, going through their application forms for a month's period is an extremely lengthy period.

I can't guess how much time they will need to examine their forms so if I could ask for ten working days for the rest of the State and ten working days for New York City subject to my notification of counsel and yourself.

Mr. Norlander: No objection, your Honor. I think—

The Court: That would take us to January 6th.

Mr. Norlander: I think that may be reasonable under the circumstances, provided they are instructed to make a diligent search of all these things, to search out all these people.

Ms. Juviler: Right.

Mr. Norlander: And to commence immediately and they should strive to get it done before then.

Ms. Juviler: That is with leave to my revising an estimate based on my conversations with the New York City administrator.

Mr. Norlander: If your Honor please, plaintiffs are not particularly worried in this regard because I know that Westchester County has their denials computer-coded and I would imagine New York City is even more—

Ms. Juviler: No. It only is about a third of the centers. However, they have had a very strong policy about the use of this presumption and they told me that at least within the last two weeks they are keeping track of the denials based on these grounds but I know from past experience that the volume of cases in New York City is so great and the volume of denials is enormous, or applications every week.

Mr. Norlander: Perhaps the notification letter should also include, your Honor, the statement, "If you have any questions about this, contact a legal services office."

I would point out to your Honor that the regulations of the Department of Social Services do have provisions that—for notification of persons of the availability of legal service so that it would not be anything out of the ordinary to ask them to notify them that they might contact the legal services.

The Court: Well, it is a little out of the ordinary to me but I don't want to prejudge it.

Is this normal and usual?

Mr. Norlander: Yes.

Ms. Juviler: I've never heard of it and I think it is inappropriate for us to tell people what offices they should go to for help. They are supposed to go to their local Social Services Department for help.

Mr. Norlander: Your Honor, every denial letter up in Dutchess County, I understand, gives the name and address of the nearest local services office. It is not the kind of thing that is unheard of in the Department of Social Services.

The Court: Miss Juviler, I am just trying to ask—"am I free to ask for legal advice" as they may see fit?

Ms. Juviler: Yes, your Honor. Of course, any denial of assistance is also accompanied by a statement that you have a right to a fair hearing and describes the legal rights

but this letter wouldn't be a denial. It would be a statement that "you should go down to the local Social Services Office because your claim is being renewed."

The Court: Then it says that they may reapply for such assistance retroactive to November 12, 1974 and are free to ask for legal advice as they may see fit.

Is that harmless?

Ms. Juviler: Certainly.

The Court: Mr. Norlander, I'll go that far.

Mr. Norlander: We can perhaps settle the formula later.

The Court: Well, I was thinking I would try to do it now. I was thinking of an endorsement, "motion granted to the extent that the defendant Lavine will send a letter on or before January 6, 1974, to all those members of the class denied assistance since November 12, 1974, advising such members that they may reapply for such assistance retroactive to November 12, 1974 and are free to ask for legal advice as they may see fit".

You see, I won't be available for the next two weeks and I think it is more practical if we can settle it right now.

Does that seem all right?

Ms. Juviler: Yes.

Mr. Norlander: "May apply for legal services at their nearest"—

The Court: Apply for legal advice as they may see fit.

Now, I submit, of course, I didn't give you everything that you wanted and I'll say, "Otherwise, motion denied."

Mr. Norlander: Thatk you, your Honor.

The Court: Motion denied, and I have told you that if from now on there is a defiance of the order, which I frankly can't contemplate, but if there is, I have an open mind.

Mr. Norlander: I have nothing further, your Honor, except I will wish to speak in opposition to the stay.

The Court: All right.

Ms. Juviler: If I may, then, I'll conform a copy at the close of the session.

The Court: Of course.

Then let me endorse this.

Mr. Norlander, one slight change. I think we are talking about home relief assistance in your application, are we not? We haven't got aid to dependent children in here.

Mr. Norlander: In my motion, you mean? I think that the letter should reflect, "and aid to dependent children," also.

The Court: Aid to dependent children since November 12th? I don't think so.

Your examples are all home relief.

Mr. Norlander: Well, your Honor, let me explain:

The brunt of this presumption seems to fall upon home relief recipients.

The Court: And the affidavits that you submitted are all home relief people, are they not?

Mr. Norlander: That's correct. I am aware of one person up in Monroe County and I have an affidavit that is being mailed to me which states that an ADC applicant was denied. This is a rare occurrence and, in fact, your Honor, I think in most instances of application where children are involved perhaps the Department has been less willing to make a finding that that person voluntarily has quit.

The Court: I think I will stick to home relief assistance. I thought we were talking about that, only.

Ms. Juviler: Your Honor, ordinarily these letters are sent by the local commissioners. Can "the defendant Lavine" be read to mean that he tells the local commissioners to do it, because he does not have the mailing lists and he actually does not have the direct authority to grant assistance?

The Court: Well, "the defendant Lavine will cause to

be sent." I am sure Mr. Norlander doesn't have any objection to that.

(Pause.)

The Court: Now, I have endorsed this original order to show cause:

"Motion granted to the extent that defendant Lavine will cause to be sent a letter on or before January 6, 1975, to all those members of the class denied home relief assistance since November 12, 1974, advising such members that they may reapply for such assistance retroactive to November 12, 1974, and are free to ask for legal advice as they may see fit.

"Otherwise, motion denied. So ordered."

All right, Mr. Clerk.

Now, Mr. Battistoni's affidavit, is that in connection with the motion we have just disposed of?

Ms. Juviler: Yes, your Honor.

The Court: Now, Miss Juviler, you have made a motion. Do you have a copy of it, Mr. Norlander?

Mr. Norlander: I was served with it today, your Honor, and we waive the requirements.

The Court: All right. Tell me what this is all about.

Ms. Juviler: Your Honor, it is the intention of defendant Lavine to appeal the entire order of this Court. However, we do not seek a stay of the major effective portion of the order because the actual practical effect to the State is unknown at this time, the effect of the presumption as opposed to findings of fact.

But we do ask a stay of so much of the order as applies to AFDC recipients for the reason that—

The Court: First, are you sure that I have the power as one judge to grant or deny the stay?

Ms. Juviler: No, I don't know that. I don't object to the exercise but I don't know.

The Court: I know but—

Mr. Norlander: Rule 62-C, your Honor, specifically addresses the question and says that a stay of the order of a three-judge court may not be made unless made in open court before the three judges or with the concurrence of all three judges in writing; something to that effect.

The Court: Well, I asked a good question, then, didn't I?

Ms. Juviler: I am very sorry, then, your Honor.

The Court: Well, maybe we have a sort of a practical problem.

If you were to convince me that I ought to stay the injunction, I might be able to get my two brethren to assent because it says we don't have to do it in open court if we assent in writing.

So, why don't we consider it for a few minutes because I haven't addressed the problem before and I haven't read your papers.

Ms. Juviler: Our application is for the reason of creating confusion in other areas of public assistance law, not because we anticipate that a great number of people will be affected by the order of this Court directly.

Therefore, if your Honor wanted to take this under consideration for longer than two weeks, I do not think that that would severely hamper our position. It is in the long run that the application of this case for aid to families with needy children might create a problem, as I will explain.

There are no plaintiffs, as your Honor noted, who are recipients for aid to families with needy children and the reason for that is fairly practical.

In the first instance, a great many of those families who might come up against this employment situation are families in which there is an unemployed father. According to Federal law, a person is eligible for aid to families with dependent children, unemployed father category, if the father has been unemployed for 30 days.

Since the State statute sanction period is only 30 days, it coincides with that group of people. Should this injunction be effective during the interim period, it might confuse the general area of eligibility for aid for families with needy children.

That might prejudice interests of the Federal Government because they do not aid the home relief category. They only aid the Federally aided and they have a 30-day waiting period for eligibility in the case of an unemployed father.

So, that is one area where confusion might occur should the order of this Court stand while we seek to appeal it.

The second area that is affected and might cause confusion is the area of the work incentive program which is both the Federal program and an independent State program.

The work incentive program places an obligation on persons receiving Federal assistance to be employed to participate in a WIN program. The details are very complicated and I will not go into this at this point but it might be deemed that a person who accepted employment under the WIN program and thereafter terminated the employment after a counseling period on a second opportunity, then he would be disqualified under Federal law for 90 days.

Now, the injunction of this Court might interfere with that independent operation of the work program if there were no facts on which one could prove that the reason the person left the employment was to obtain public assistance.

Therefore, without having considered the question, this Court's order might create problems in an area of great complexity which is sub judicata in other courts constantly.

That is the reason that we have applied for the stay. We believe that it will be of little disadvantage to the

legitimate interests of the plaintiff class since there are very few, if any, persons receiving ADC who are directly affected by this statutory waiting period of 30 days.

In the first place, as we stated, there were the unemployed fathers. The second group of people are families with only one parent and in those situations, the children are eligible for assistance immediately irrespective of the reason that the parent terminated his employment, so it is only the caretaker of the family that is ever affected and in the case of persons with children, all the children over six, they are subject to the work rules which have their specific enforcement provisions which I referred to in our memorandum of law.

In the case of children under six, there always is a reason to leave employment which is to take care of the children. That does not mean in an odd case that there wouldn't be a situation where that was not the reason the person terminated employment but, nonetheless, the applicability is relatively little and I think that the assidous representations by plaintiffs has demonstrated that really there are not a great many AFDC recipients, so I think that the prejudice to plaintiffs for the stay would be slight and it will be a separate ground for appeal that the order should not apply to ADC for the reasons that we submit in our memorandum in support of our counterorder.

The Court: Mr. Norlander, you haven't had a chance, of course, to get any papers together.

Mr. Norlander: Yes, I have.

Mrs. Juviler advised me on Tuesday that she intended to make this application and I have an affidavit in opposition and two copies for the other members of the Court.

The Court: All right.

Mr. Norlander: Your Honor, the standards for granting of a stay are generally set forth as four standards. The person seeking the stay must show irreparable harm. I

think that Mrs. Juviler by her own statements here has conceded that there is no irreparable harm to her clients should this Court deny the stay.

She has admitted that the impact of this presumption on the ADC class, portion of the class, seems to be rather minimal and cannot be argued by the State that it somehow causes them irreparable injury to stop presuming that they quit work to get welfare.

Now, on the other hand, as I have alluded to earlier, I have just been advised of an ADC case in which assistance was denied up in Onondaga County.

To that family, the denial of aid may indeed be irreparable. It may mean going hungry. Certainly, damaging the family in a manner that would seriously and substantially prejudice their interests on this appeal.

Before the Court, both on our motions for summary judgment and our earlier intervention motions, and in the motions or the affidavits before the Court today, the Court has seen numerous examples of the kind of harm and injury that can come to persons who are denied aid wrongfully under the statute.

Now, therefore we submit that the balance of hardships is decidedly in the plaintiffs' favor and is not, certainly, in the defendants' favor.

Secondly, or actually thirdly, we have shown that there is no irreparable harm but, on the other hand, that the plaintiffs will be damaged.

Thirdly, they have not shown any likelihood of success on the merits on appeal of this question. They have not shown to the Court in the memorandum any reason why an unconstitutional presumption would be any less unconstitutional to an ADC receiver and, in fact, if there were any Federal program or statute or regulation that had such a presumption in it, that presumption also would be unconstitutional and if the State believes that they were embody-

ing some Federal directive with this legislation, the presumption must fall, regardless of its application, to an ADC or home relief recipient.

Now, with respect to the claim that this somehow would affect the operation of the Federal work programs designed to provide work opportunities for public assistance recipients, we also submit that there is nothing in Federal law or regulations that presumes that people quit their jobs to get welfare and if, indeed, there are some sanctions in the so-called WIN program, that sanction—

The Court: What is that program?

Mr. Norlander: It is called the WIN program.

The Court: That is the work in—

Mr. Norlander: It used to be initialed W-I-P and obviously it was a public relations decision to change it to—

The Court: But it is established for work incentive?

Ms. Juviler: It is Work Incentive Program. I have the first case involving it and I never heard it called WIP.

The Court: But it is work incentive.

Ms. Juviler: In our memorandum, we refer to the sections.

Mr. Norlander: Now, this Court's decision in no way interferes with the operation of that program. It is a program designed to train people for work.

If a person quits a job or otherwise violates the regulation in that program, he is entitled to a hearing and if he loses the hearing or doesn't have a hearing, he is denied aid and a reapplication that would be an independent ground for denying aid, they wouldn't need this presumption and this Court's decision doesn't affect that law at all.

The public interest would be furthered because it is a stated interest in the Constitution of New York to provide aid to needy persons and it is the overriding interest of this legislation to provide aid to those who need it and any denial of aid wrongfully under this presumption would not

promote that interest and as we pointed out, it does not interfere with the operation of the work programs, and so we think the stay should be denied.

One other point: An application for a stay is addressed to the Court's equitable power and whenever one does seek equity in this Court, we believe that one should do so with clean hands, using the archaic language, and we do not believe that the defendant Lavine has shown an observance of this Court's decree in the past month that would justify the granting of the stay or grant the stay.

To sum up, we think that they have really failed to show irreparable harm and, in fact, they have conceded that it is not and, therefore the State—

The Court: Well, I don't think I am prepared to deny the application for a stay because of misconduct by the defendants, as I earlier said, but you have stronger grounds that I have got to consider and I can't pass on that from the bench.

Mr. Norlander: If your Honor please, may I submit a memorandum within the next—are you going to be gone for two weeks?

The Court: Yes.

Mr. Norlander: Within the next ten days?

The Court: All right.

Tell me, as a matter of interpretation of this section, could I, as a single judge, deny the motion?

Mr. Norlander: Certainly.

The Court: You think I could? Miss Juviler?

Ms. Juviler: Your Honor, could I take a look at the section?

Mr. Norlander: It pertains only to the granting of the stay.

The Court: Well, it has a lot of language there.

Mr. Norlander: I wish to point out no appeal has been taken.

Ms. Juviler: Yes, your Honor, you could deny it.

The Court: You think I could?

Ms. Juviler: Yes.

The Court: I am not suggesting that is what I am trying to do. I don't have any feeling about it.

Mr. Norlander: I would point out that although they state they intend to appeal, I believe the section indicates that when an appeal is taken—but I also assume I would be served with a notice of appeal.

The Court: Well, I would assume that that is a formality that the State—

Ms. Juviler: Your Honor, there are Supreme Court decisions that until a final order is entered, I can't take a notice of appeal, as we cited in our memorandum, that a decision issuing summary judgment is not sufficient.

The Court: All right. Now, Miss Juviler, you say that your motion for a stay if its waits for three weeks, no great harm will happen?

Ms. Juviler: Yes. It would be the long term effects and confusion with the other programs.

The Court: All right. I believe that, in any event, whatever may be the interpretation of this section, that I ought to consult the two other members of the Court. I think that would be ordinary prudence, anyway, so before the end of tomorrow, I'll send them advice that the application has been made and copies of the papers and, then, when will you get your memorandum in?

Mr. Norlander: I can have the memorandum by the end of next week, your Honor.

Would that be soon enough?

The Court: Yes. That is by Friday, the 27th.

Mr. Norlander: Yes.

The Court: And the important thing is to give it to Miss Juviler and then you will want to say something, I imagine, Miss Juviler, or you may.

Hearing Before District Judge, December 19, 1974.

Ms. Juviler: Your Honor, I will be away from the 27th through the 1st, so I will be back January 2nd, so as far as I am concerned, he can have until January 1st or January 2nd.

The Court: Well, then, when do you want to decide whether you will submit anything further?

Ms. Juviler: I'll let you know—well, if I receive it on the morning of January 2nd or it is on my desk when I get there, I'll let you know at the end of the day.

The Court: Then why don't you let my chambers know by the close of business on Friday, January 3, 1975, whether you want to submit anything in opposition and I take it that if you do, you could do it by the end of the following week.

Ms. Juviler: It wouldn't take me that long, your Honor.

The Court: Well, whatever.

Ms. Juviler: I could do it by the following Monday.

The Court: January 6th?

Ms. Juviler: That's correct.

The Court: Then we understand each other.

Mr. Norlander, you can send your papers by the 31st but I suggest you go ahead and do it as soon as you can because the 31st is going to be a wild day.

Mr. Norlander: I will, your Honor. I may have it done before then.

The Court: But Miss Juviler won't be back until after New Year's and she is going to let me know by the end of the day on January 3rd whether she wants to submit something by the end of the day on January 6th.

So, we understand each other now.

Ms. Juviler: Right.

Mr. Norlander: Yes, your Honor.

(Court adjourned.)

Memorandum Opinion and Order of the Three-Judge District Court Granting a Partial Stay of its Order Pending Appeal.

RONALD MILNE, and others,
Plaintiffs,

—v—

LEONARD BERMAN, and others,
Defendants.

73 Civ. 5397

This is a motion by defendant Lavine for an order staying execution of so much of the final judgment and order of this Court, filed December 13, 1974, as enjoins defendants from enforcing, as against applicants for Aid to Dependent Children (Title 10, New York Social Services Law), the presumption contained in the second sentence of New York Social Services Law § 131(11) (McKinney Supp. 1974). Fed. R. Civ. P. 62(c) The notice of motion does not state the length of the stay requested but presumably it is "during the pendency of the appeal". Fed. R. Civ. P. 62(c)

The notice of motion was returnable on December 19, 1974, when it was submitted (after oral argument) to a single judge and was taken under advisement.

At the time the motion was made, argued, and submitted, there was a stated intention by movant to appeal but no appeal had in fact been taken. Under the wording of Rule 62(c), it would seem that the motion could not then have been granted because the authority for granting such a motion exists *after* an appeal has been taken. See *United States* v. *El-O-Pathic Pharmacy*, 192 F.2d 62, 79 (9th Cir. 1951)

It now appears that an appeal has been recently taken by movant Lavine, the notice of appeal having been filed with the Clerk of this Court on January 9, 1975.

Memorandum Opinion and Order of the Three-Judge District Court Granting a Partial Stay of its Order Pending Appeal.

Copies of the moving papers, of the opposing affidavit, of the Memorandum for Plaintiffs of points and authorities in opposition to motion for a stay (dated December 26, 1974), and of the letter (dated January 6, 1975) of counsel for movant Lavine, have been submitted to all the judges of this three judge Court.

The motion for a stay is granted.

So ordered.

Dated: January 22, 1975

James L. Oakes
James L. Oakes
United States Circuit Judge

Dudley B. Bonsal
Dudley B. Bonsal
United States District Judge

Inzer B. Wyatt
Inzer B. Wyatt
United States District Judge

Notice of Appeal.

UNITED STATES DISTRICT COURT
Southern District of New York

73 Civ. 5397

IBW

Ronal Milne, individual and on behalf of all other persons similarly situated,

Plaintiff,

—and—

Douglas Streeter, Robert C. Lee, Joe Nathan Beverly, Willie Beverly, Odell Beverly, and John Beverly, by their mother and next friend, Roberta Beverly, individually and on behalf of all other persons similarly situated,

Intervenor-Plaintiffs,

—against—

Leonard Berman, individually and as Commissioner of the Westchester County Department of Social Services and Abe Lavine, individually and as Commissioner of Social Services,

Defendants,

—and—

George E. Boisvert, individually and as Commissioner of the Ontario County Department of Social Services,

Intervenor-Defendants.

SIRS:

PLEASE TAKE NOTICE that defendant Abe Lavine hereby appeals to the Supreme Court of the United States from the Judgment and Order of the three-judge district court dated the 13th day of December, 1974, and entered in the office of the Clerk of the United States District Court, Southern District of New York, on the same day which permanently enjoined defendants from enforcing the presumption contained in the second sentence of New York Social Services Law § 131(11) (McKinney Supp. 1974) and 18 NYCRR § 385.7 that persons who voluntarily terminated their employment within 75 days preceding their application for Home Relief or Aid To Needy Families With Dependent Children assistance did so for the purpose of qualifying for or receiving a greater amount of such assistance; and which declared that same section of that statute violates the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and from an Order of the United States District Court, Southern District of New York dated the 13th day of December, 1974 and entered in the office of the Clerk of that Court on the same day which declared the action to be maintainable as a class actions which class of plaintiffs consists of all persons residing in New York State who have or my apply for public assistance in the Home Relief or Aid to Needy Families with Dependent Children categories within 75 days after voluntarily terminating their employment and who have been, or may be disqualified from receiving such assistance for any period due to the enforcement of the presumption, that such persons terminated their employment for the purpose of qualifying for or receiving a greater amount of such assistance, contained in the second sentence of New York Social Services Law, § 131(11) (McKinney Supp. 1974), and in NYCRR § 385.7; and the said defendant here-

by appeals from each and every part of said Judgment and Order as well as the whole thereof.

This appeal is taken pursuant to 28 U.S.C. § 1253.

Dated: New York, New York
January 10, 1975

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

.....

AMY JUVILER
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3443

To: THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
56 Grand Street
White Plains, New York 10601
Att: Gerald Norlander, Esq.

HON. GEORGE E. BOISVERT
Commissioner of Social Services
for Ontario County
Canandaigua, New York 14424
Att: Mr. Harrison Downe

HON. HARRY LOTT
County Attorney
County Office Building
White Plains, N.Y. 10601
Att: Richard A. McAtamney Esq.

MONROE COUNTY LEGAL ASSISTANCE CORP.
Flood Disaster Relief Project
126 Pine Street Room 303
Corning, New York 14830

Supreme Court, U. S.
FILED
APR 14 1975
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

- against -

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, and JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

MOTION TO AFFIRM

THE LEGAL AID SOCIETY OF
WESTCHESTER COUNTY
By: Martin A. Schwartz, of Counsel
Gerald Norlander, of Counsel
56 Grand Street
White Plains, New York 10601
Tel. (914) 761-9200

Counsel for Appellees

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

- against -

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, and JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

Appellees, pursuant to Rule 16 of the Rules of the Supreme Court of the United States, move that the judgment of the three-judge district court be affirmed, on the ground that it is manifest that the questions presented by appellants are so unsubstantial as not to require further argument.

OPINIONS BELOW

The opinion of the three-judge district court determining the action to be a proper class action and granting plaintiffs' motion for summary judgment is reported sub nom. Milne v. Berman, 384 F.Supp. 206 (S.D.N.Y. 1974).

QUESTIONS PRESENTED

1. Whether New York Social Services Law, §131(11), which provides that a person who applies for public assistance within 75 days after voluntarily terminating his employment "shall...be deemed to have voluntarily terminated his employment for the purpose of qualifying for...assistance...in the absence of evidence to the contrary supplied by such person", violates the Due Process Clause.

> The three-judge district court unanimously held that the rebuttable presumption created by this statute violated the Due Process Clause. [384 F.Supp. at 210, 213].

2. Whether the presumption contained in New York Social Services Law,§131(11) was in operation irrebuttable in violation of the Due Process Clause, where the hearings offered plaintiffs were not determined until after the expiration of the 75 day statutory period, and thus did not afford plaintiffs an opportunity to rebut the presumption.

> The three-judge district court did not reach this question [384 F.Supp. 209], but noted that the presumption was irrebuttable in operation. [384 F.Supp. at 211 n. 5]. Appellees contend that the judgement below may also be affirmed on this ground.

3. Whether applicants for Aid to Needy Families With Dependent Children assistance were properly included in the plaintiff class.

> The three-judge district court held that they were properly included in the plaintiff class. [384 F.Supp. at 210].

STATUTE INVOLVED

Enforcement of the emphasized portion of the following statute was enjoined by the three-judge district court, [384 F.Supp. at 213]:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person." N.Y. Social Services Law, §131(11) (McKinney Supp. 1974) (emphasis added).

PRELIMINARY STATEMENT

New York Social Services Law, §131(11) on its face creates a rebuttable presumption that all persons who apply for public assistance within 75 days after voluntarily terminating their employment, terminated employment for the purpose of qualifying for assistance. Each of the plaintiffs-appellees (hereafter plaintiffs) were denied public assistance pursuant to this provision.*

---

* The court below certified the action as a class action. 384 F.Supp. at 213. Defendent does not contest the propriety of the class, but only challenges the inclusion of AFDC recipients in the class. Since the presumption operates for a 75 day period, the nature of the issue is such that it is "capable of repetition, yet evading review." Sosna v. Iowa, 43 U.S.C.W. 4125, 4127-4129 (U.S. Jan. 14, 1975).

In operation, plaintiffs were denied opportunities to rebut the presumption during the 75 day statutory period. The hearings offered them did not have to be determined until 90 days after the hearing was requested, 18 N.Y.C.R.R. §358.18, and thus after the end of the statutory 75 day period.

This case thus involves the relatively narrow question, whether the statutory rebuttable presumption on its face and as applied violates the Due Process Clause. This action does not challenge New York's substantive work requirements for public assistance eligibility. Cf. New York State Department of Social Services v. Dublino, 413 U.S. 405 (1973). Nor does this action challenge New York's substantive policy of denying public assistance to any person who in fact terminates his employment for the purpose of qualifying for public assistance.

Defendant-appellant (hereafter defendant) has not shown that the procedural device of the presumption contained in New York Social Services Law, §131(11) is necessary for the operation of New York's public assistance program, or that other states find it necessary to utilize this or similar presumptions in order to carry out their public assistance programs.

I

THE DECISION BELOW IS CLEARLY CORRECT

Plaintiffs were disqualified from receiving any public assistance due to the enforcement of the statutory presumption that they left their employment in order to qualify for public assistance. The three-judge court held that this presumption violated the Due Process Clause because there is no rational connection between the known fact, i.e., voluntary employment termination within the seventy-five days preceding application for public assistance, and the presumed fact, i.e., that employment termination was for the purpose of qualifying for public assistance.

In reaching this conclusion, the court below applied the standard to determine the constitutionality of a presumption that this Court has consistently applied since the decision in Mobile Jackson and Kansas City R.R. Co. v. Turnipseed, 219 U.S. 35, 43 (1910). For a statutory presumption to satisfy the requirements of due process there must be a "rational connection between the fact proved and the ultimate fact presumed... [T]he inference of one fact from another shall not be so unreasonable as to be a purely arbitrary mandate." Mobile Jackson and Kansas City R.R. Co. v. Turnipseed, 219 U.S. 35, 43 (1910). Accord, Adler v. Board of Education, 342 U.S.485, 494 (1952); Bandini v. Superior Court, 284 U.S. 8, 11 (1931); Western and Atlantic R.R. v. Henderson, 279 U.S. 639, 642-644 (1929); McFarland v. American Sugar Refining Co., 241 U.S. 79, 86 (1916); Lindsley v. Natural Carbonic Co., 220 U.S. 61, 82-83 (1910). See also,

Turner v. United States, 396 U.S. 398 (1970); Leary v. United States, 395 U.S. 6 (1969); United States v. Romano, 380 U.S. 136 (1965); United States v. Gainey, 380 U.S. 63 (1965); Tot v. United States, 319 U.S. 463 (1943); Manley v. Georgia, 279 U.S. 1 (1929).* To determine if this rational connection is present, the three-judge district court followed this Court's approach of relying upon "common sense and experience", Barnes v. United States, 412 U.S. 837, 845 (1973), and "the available pertinent data." Leary v. United States, 395 U.S. 6, 38 (1969). Accord, Turner v. United States, 396 U.S. 398 (1970).

Applying these well established standards the three-judge district court concluded "that the statutory rebuttable presumption is irrational and in violation of the due process clause because there is an insufficient connection between the known fact, that is, application for public assistance within 75 days of an applicant's termination of employment, and the fact presumed by the statute, that is,that the applicant terminated his employment for the purpose of qualifying for public assistance."

---

* See also Speiser v. Randall, 357 U.S. 513,523-524 (1958) ("In civil cases too, this court has struck down state statutes unfairly shifting the burden of proof.") The sanction of the denial of assistance for 75 days based on the statutory presumption must comport with the Due Process Clause. See generally, Goldberg v. Kelly, 397 U.S. 254 (1969). It is not constitutionally significant that the enforcement of the presumption was primarily against applicants for the state and locally funded home relief assistance, New York Social Services Law, §158. Constitutional limitations are fully applicable to a state and locally funded program. See, Memorial Hospital v. Maricopa County, 415 U.S. 1050 (1974); New Jersey Welfare Rights Organization v. Cahill, 411 U.S. 619 (1973).

Milne v. Berman, 384 F.Supp. 206, 210 (S.D.N.Y. 1974). See Bailey v. Alabama, 219 U.S. 219, 238, where this Court in dictum criticized a similar presumption arising from employment termination. See also, Owens v. Roberts, 377 F.Supp. 45 (M.D. Fla. 1974) (three-judge court).

The court below had ample basis to conclude that there is no rational connection between the given facts and the presumed motive to qualify for assistance:

(1) The amount of public assistance, approximately $3 per day to meet all of a person's needs other than shelter, New York Social Services Law, §131-a(3), is so low that "it cannot be assumed that any substantial number of people would terminate their employment in order to receive assistance." [384 F.Supp. at 210].*

---

* Additionally, New York requires liquidation of virtually all of a recipient's assets as a condition of eligibility. See generally, Snell v. Wyman, 281 F.Supp. 853 (S.D.N.Y.), aff'd, 393 U.S. 323 (1969). The former Acting Commissioner of the New York Department of Social Services, defendant Lavine's predecessor, has testified before a congressional subcommittee on fiscal policy: "But I question ... that the public assistance payment levels themselves, or even the combination of services are so liberal as to encourage people to leave work and to go on the public assistance rolls." Testimony of Mr. Barry Van Lare, Problems in Administration of Public Welfare Programs, Hearings before Subcommittee on Fiscal Policy, Joint Economic Committee, 92d Sess. Part I, p.362, March 20, April 11, 12, 13, 1972.

(2) In view of the fact that all public assistance recipients must comply with New York's work rules as conditions of their eligibility, New York Social Services Law, §131( ), "it is not reasonable to presume that currently employed persons would terminate their employment to attempt to avoid work." [384 F.Supp. at 210 n.3].

(3) People generally terminate their employment for reasons totally unrelated to public assistance eligibility - "desire for advancement, problems of health, family problems, transportation problems, personality conflicts, working conditions, and...basic discontent with a job...." [384 F.Supp. at 210]. There are also "numerous reasons why a person who terminates his employment subsequently becomes impoverished and has to resort to a request for public assistance - general economic conditions, a decline in job availability in a particular industry, health,...failure to receive an anticipated new position" and delay in receiving unemployment insurance benefits. [384 F.Supp. at 211].

(4) Government studies and reports submitted to the court below and uncontroverted by defendants clearly substantiate the facts that poor people have the same desire to work and the same work ethic as other persons, and that there is "no significant association whatsoever between public welfare expenditures per capita and [labor force participation of males aged 25-54]."*

---

* Bowen, W.G. and Finegan, T.A., The Economics of Labor Force Participation, p.71 (Princeton University Press, (1969) (partially funded by United States Department of Labor Manpower Administration.) Copies of these and numerous other studies substantiating the irrationality of the statutory presumption are annexed to the Affidavit of Norlander in Support of Plaintiffs' Motions for Order Determining Class Action and Summary Judgment.

Each of the above reasons and certainly all in combination substantiate that there is no rational basis to presume that plaintiffs terminated their employment for the purpose of qualifying for public assistance.*

Defendant's contention that New York Social Services Law 131(11) is designed to deter persons from leaving employment in the expectation of obtaining public assistance does not justify the imposition of an irrational presumption. As the court below concluded, convenience does "not justify the presumption operating so as to impute bad motive in all cases." Milne v. Berman, 384 F.Supp. 206, 212 (S.D.N.Y. 1974) (emphasis in original).

Because the three-judge district court correctly concluded that the statutory presumption on its face was irrational in violation of the Due Process Clause, plenary review by this Court is not warranted.

---

* The court below also properly rejected the contention that it should uphold the presumption because the motive for terminating employment is within the knowledge of the applicant. Milne v. Berman, 384 F.Supp. 206, 212 (S.D.N.Y. 1974). This court has held that an irrational presumption cannot be sustained on the basis of the comparative convenience of producing evidence. Leary v. United States, 395 U.S. 6, 45 (1965); Tot v. United States, 319 U.S. 463, 467-469 (1943). Presumptions of knowledge were held unconstitutional in Leary and in Turner v. United States, 396 U.S. 398 (1970). See also, New York Times Company v. Sullivan, 376 U.S. 254, 284 (1964), citing Bailey v. Alabama, 219 U.S. 219, 239 (1910). In Bailey, supra, a presumption arising from employment termination was criticized in dictum.

II

THE JUDGMENT BELOW MAY BE AFFIRMED ON THE ALTERNATIVE GROUND THAT PLAINTIFFS WERE DENIED A FAIR OPPORTUNITY TO REBUT THE PRESUMPTION.

In operation, the statutory presumption denied plaintiffs an opportunity to rebut the presumption within the 75 day sanction period and thus operated as a conclusive presumption in violation of the Due Process Clause. A legislative presumption which "operates to deprive a party of a reasonable opportunity to present the pertinent facts in his defense ... violates the due process clause." Bandini Petoleum v. Superior Court, 284 U.S. 8, 19 (1931); Western and Atlantic Railroad v. Henderson, 279 U.S. 639, 642 (1929); Mobile, Jackson, and Kansas City Railroad Co. v. Turnipseed, 219 U.S. 35, 43 (1970). Accord, Cleveland Board of Education v. La Fleur, 414 U.S. 632 (1974); Vlandis v. Kline, 412 U.S. 441 (1973); United States Department of Agriculture v. Murray, 413 U.S. 508 (1973); Stanley v. Illinois, 405 U.S. 645 (1972).

The only "opportunity" plaintiffs had to rebut the presumption was at State fair hearings. 18 N.Y.C.R.R. Part 358. Defendant, however, has up to 90 days after the hearing is requested to render and implement a fair hearing decision. 18 N.Y.C.R.R. §358.18; 45 C.F.R. §205.10 (a)(16).*

---

* Defendant Lavine admits that an expedited hearing does not exist for persons found ineligible for assistance pursuant to the statutory presumption. Jurisdictional Statement, p.25; Defendant Lavine's Answer, ¶¶18-21. Moreover, defendant has not even complied with the 90 day requirement. Nelson v. Sugarman, 361 F.Supp. 1132 (S.D.N.Y. 1971); Cisco v. Lavine, 72 Misc. 2d 1009 and 72 Misc. 2d 1087 (N.Y. Sup.Ct. 1973).

The district court, while not resting its decision on this basis, found that "quite obviously, a determination of whether the statutory presumption has been rebutted is totally meaningless when it occurs after the 75 day waiting period. This Catch-22 approach to procedural due process is evidenced in the record ...." Milne v. Berman, 384 F.Supp. 206, 211 n.5 (S.D.N.Y. 1974). See also, Owens v. Roberts, 377 F.Supp. 45, 52 (M.D. Fla. 1974) (three-judge court).

Defendant contends that the plaintiffs could rebut the presumption at the time they applied for assistance. The record shows otherwise. In addition, at this time, plaintiffs had not received prior notice of the reasons for the denial, did not have an opportunity to retain counsel, had no opportunity to obtain and present their "evidence" [N.Y. Social Services Law, §131(11)] or to refute any agency evidence, and had no opportunity to obtain a decision from an impartial decision maker. All of the minimal due process protections are lacking at the time of application. Goldberg v. Kelly, 397 U.S. 254 (1969).*

In sum, because plaintiffs were denied an opportunity to rebut the statutory presumption during the 75 day period, the presumption operated as a conclusive presumption in violation of the Due Process Clause. This provides an ample alternative basis for this Court to summarily affirm the judgment of the court below.

---

* It is generally recognized that presumptions are devices used to shift the burden of coming forward at an adversary hearing. Wigmore, IX Evidence §2490 (3d edition). Compare Adler v. Board of Education, 342 U.S. 485, 495 (1952).

III

APPLICANTS FOR AFDC ASSISTANCE WERE PROPERLY INCLUDED IN THE PLAINTIFF CLASS.

The three-judge court held that applicants for AFDC assistance were properly included in the plaintiff class because, for purposes of determining the constitutionality of the statutory presumption, there is no constitutional significance between applicants for home relief assistance and applicants for AFDC assistance. [384 F.Supp. at 210].

State regulations provide for a 30, as opposed to a 75 day period of disqualification for AFDC recipients. 18 N.Y.C.R.R. §385.7(b). The determination of the rationality of the statutory presumption does not depend, however, on the length of the period of disqualification. Rather, the critical conclusion by the court below was that it is irrational to presume that plaintiffs terminated their employment in order to qualify for public assistance. This conclusion is equally valid whether a person applies for home relief or AFDC assistance.*

---

* 18 N.Y.C.R.R. §385.7(c) provides that where there is a conflict between the sanctions in New York State law and in federal Work Incentive Program (WIN) provisions, "the WIN sanction shall be imposed." The judgment below does not interfere with any of the federal WIN provisions. Nor does the judgment below prevent defendant from requiring plaintiffs to accept any available employment. New York Social Services Law, §131(5).

Moreover, defendant Lavine concedes that "few [AFDC recipients] have been sanctioned under the statute." (Defendant Lavine's Memorandum of Law In Opposition to the Order for Contempt and Equitable Relief and In Support of A Motion for A Partial Stay, Dec. 19, 1974, p.7). The inclusion of AFDC recipients in the plaintiff class thus does not present a substantial question worthy of plenary review by this Court.

CONCLUSION

Wherefore, appellees respectfully submit that the questions upon which this case depends are so unsubstantial as not to need further argument, and appellees respectfully move to affirm the judgment and order of the three-judge district court.

Dated: April 11, 1975
White Plains, New York

Respectfully submitted,

The Legal Aid Society of
Westchester County
By: Martin A. Schwartz,
of Counsel
Gerald Norlander,
of Counsel
56 Grand Street
White Plains, New York
Tel: (914) 761-9200

SEP 5 1975
MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellant
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3443

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

AMY JUVILER
Assistant Attorney General
of Counsel

TABLE OF CONTENTS

	PAGE
Opinions Below	1
Jurisdiction	2
Statute and Regulation Involved	2
Questions Presented	3
Statement	4
A. State Statute and Regulation	5
B. The Plaintiffs	9
1. Ronald Milne	10
2. Robert C. Lee	11
3. Douglas Streeter	11
4. The Beverly Brothers	12
5. Applicants for Intervention	13
C. Prior Proceedings	14
D. The Opinion Below	16
Summary of Argument	22
POINT I—The rebuttable presumption governing the receipt of evidence of eligibility by a local welfare office is based on a rational relationship between the fact proven and the fact presumed	24
A. A Rebuttable Presumption in a Civil Case Is Valid as Long as it Is Not Purely Arbitrary	25

PAGE

B. There is a Rational Relationship Between a Voluntary Termination Followed by an Application for Public Assistance Benefits and a Presumption that the Applicant Quit His Job for the Purpose of Obtaining Assistance 29

C. By Permitting Rebuttal, This Statute Avoids the Defects of a Conclusive Presumption 31

D. There Are No Impediments to the Use of Presumptions in Application Proceedings Comparable to the Limits on the Imposition of a Presumption Against a Criminal Defendant 33

E. The Decision Below Was Unjustified by any Precedent 34

F. The Court Below Failed to Assess Rationality of the Rebuttable Presumption 37

G. The Enactment of This Presumption Was a Proper Exercise of Legislative Power 41

POINT II—The simple procedures for rebutting the presumption in the local social services office and at the State fair hearing guarantee due process of law especially because the facts which rebut the presumption are wholly within the applicant's knowledge and control 44

A. The Flexible Procedures at the Local Welfare Office Which Can be Reviewed at a State Fair Hearing Protect an Applicant's Right to Due Process of Law 49

B. The Presumption does not Impose an Onerous Burden of Proof on the Applicant Who has the Burden of Proving Eligibility for Assistance, Even Absent the Presumption 51

PAGE

C. It is Reasonable to Require an Applicant for Assistance to Provide Relevant Evidence Which is Entirely Within his Possession 52

POINT III—The class action order and injunction were expanded to enjoin provisions relating to AFDC applicants although no plaintiffs were applicants for AFDC and although the provisions involving AFDC applicants were significantly different from those affecting plaintiffs 54

Conclusion 58

APPENDIX

Portions of the Regulations of the New York State Department of Social Services 1a

TABLE OF AUTHORITIES

CASES

Arnett v. *Kennedy*, 416 U.S. 202 (1974) 50

Atlantic Coast Line R. Co. v. *Ford*, 287 U.S. 502 (1933) 27

Bandini Petroleum Co. v. *Superior Court*, 284 U.S. 8 (1931) 20, 26, 28, 31, 42, 52

Bell v. *Burson*, 402 U.S. 335 (1971) 50

Bintliff v. *United States*, 462 F. 2d 403 (5th Cir. 1972) 29, 33

Board of Regents v. *Roth*, 408 U.S. 564 (1972) 50

Breeden v. *Weinberger*, 493 F. 2d 1002 (4th Cir. 1974) 27

Campbell v. *United States*, 365 U.S. 85 (1961) 53

PAGE

Carrington v. *Rash*, 380 U.S. 89 (1965) 33

Cleveland Board of Education v. *La Fleur*, 414 U.S. 632 (1974) 32, 42, 50

Dandridge v. *Williams*, 397 U.S. 471 (1970) 41, 43

De Funis v. *Odegaard*, 416 U.S. 312 (1974) 56

De Kalb Real Estate Board v. *Chairman and Board of Commissioners*, 372 F. Supp. 748 (N.D. Ga. 1973) 34, 35-6, 37

Electric Bond and Share Co. v. *Securities and Exchange Commission*, 303 U.S. 419 (1938) 56

Ferguson v. *Skrupa*, 372 U.S. 726 (1963) 43

G.E.J. Corp. v. *Uranium Aire, Inc.*, 311 F. 2d 749 (9th Cir. 1962) 53

Goldberg v. *Kelly*, 397 U.S. 254 (1970) 50

Golden v. *Zwickler*, 394 U.S. 103 (1969) 56

Goss v. *Lopez*, —— U.S. ——, 42 L. Ed. 2d 725 (1975) 50

Hawkins v. *Bleakly*, 243 U.S. 210 (1917) 26

Heiner v. *Donnan*, 285 U.S. 312 (1932) 29, 33

Jefferson v. *Hackney*, 405 U.S. 535 (1972) 42

Jiminez v. *Weinberger*, 417 U.S. 628 (1974) 42

Jones v. *Berman*, 37 NY 2d 42 (1975) 49, 51

Leary v. *United States*, 395 U.S. 6 (1969) 21, 33, 52

Lindsley v. *Natural Carbonic Gas Co.*, 220 U.S. 61 (1911) 26, 52

Liverpool, N.Y. & P.S.S. Co. v. *Commissioners*, 113 U.S. 33 (1885) 56-7

Luria v. *United States*, 231 U.S. 9 (1913) 26

PAGE

McDonald v. *Board of Election Commissioners*, 394 U.S. 802 (1969) 39

Meeker & Co. v. *Lehigh Valley Railroad Co.*, 236 U.S. 412 (1915) 26

Mobile J. & K.C.R. Co. v. *Turnipseed*, 219 U.S. 35 (1910) 25, 26, 31, 42, 52

Mullaney v. *Wilbur*, —— U.S. ——, 44 L. Ed. 2d 508 (1975) 34

Muskrat v. *United States*, 219 U.S. 346 (1911) 57

Nelson v. *Sugarman*, 361 F. Supp. 1132 (S.D.N.Y. 1971) 48, 51

New York State Department of Social Services v. *Dublino*, 413 U.S. 405 (1973) 6, 40-1

Owens v. *Roberts*, 377 F. Supp. 45 (M.D. Fla. 1974) 34-5

Perry v. *Sinderman*, 408 U.S. 593 (1972) 50

Poe v. *Ullman*, 367 U.S. 497 (1961) 56

Reitler v. *Harris*, 223 U.S. 437 (1912) 26

Richardson v. *Belcher*, 404 U.S. 78 (1971) 42

Sanford v. *Rockefeller*, 35 N Y 2d 547 (1974), *app. dism. sub nom. Sanford* v. *Carey*, —— U.S. ——, 43 LW 3613 (5/19/75) 27, 29, 49, 50, 52

San Antonio School District v. *Rodriquez*, 411 U.S. 1 (1973) 42

SCM Corporation v. *Radio Corporation of America*, 407 F. 2d 166 (2d Cir. 1969), *cert. denied* 395 U.S. 943 (1969) 55

Snell v. *Wyman*, 381 F. Supp. 853 (S.D.N.Y. 1968) affd. 393 U.S. 323 (1969) 43

Stanley v. *Illinois*, 405 U.S. 645 (1972) 32-3

PAGE

Starns v. *Malkerson,* 326 F. Supp. 234 (3-Judge Court D. Minn. 1970) *aff'd.* 401 U.S. 985 (1971) .. 35

Tileston v. *Ullman,* 318 U.S. 44 (1943) 55-6

Torres v. *New York State Department of Labor,* 333 F. Supp. 341 (S.D.N.Y. 1971), *aff'd.* 405 U.S. 949 (1972) 49-50

Torres v. *New York State Department of Labor,* 321 F. Supp. 432 (S.D.N.Y. 1971), vacated and remanded 402 U.S. 968 (1971) 50

Tot v. *United States,* 319 U.S. 463 (1943) 21, 34, 52

Turner Elkhorn Mining Co. v. *Brennan,* 385 F. Supp. 424 (3-Judge Ct., E.D. Ky. 1974), *prob. jur. noted* 6/9/75 *sub nom. Dunlop* v. *Turner Elkhorn Mining Co.* (#74-1302) and *Turner Elkhorn Mining Co.* v. *Dunlop* (#74-1316) 43 LW 3644 (6/19/75) 27, 52

United States v. *N.Y.N.H. & H.R.R. Co.,* 355 U.S. 253 (1957) 53

United States v. *Romano,* 382 U.S. 136 (1965) ...21, 33, 52

United States Dep't of Agriculture v. *Murry,* 413 U.S. 508 (1973) 21, 31, 32

Van Lare v. *Hurley,* —— U.S. ——, 44 L. ed. 2d 208 (1975) 17

Vlandis v. *Kline,* 412 U.S. 441 (1973) 21, 31, 32, 35

Watson v. *Cronin,* 384 F. Supp. 652 (D. Colo. 1974).. 27

Weinberger v. *Salfi,* —— U.S. ——, 45 L. ed. 2d 522 (1975) 31, 42

Western and Atlantic Railroad v. *Henderson,* 279 U.S. 639 (1929) 27

In re Winship, 397 U.S. 358 (1970) 34

STATUTES AND RULES

26 U.S.C.: PAGE

§ 2035 .....29, 33

28 U.S.C.:

§ 1253 2

§ 2281 15

§ 2284 15

42 U.S.C:

§ 601 7

§ 602(a)(19) 9

§ 607(b)(1) 7, 9

§ 633(g) 9

§ 1381 ..... 7, 45

Rules of the Supreme Court of the United States:

Rule 48 1

McKinney's Session Laws of New York, 194th Sess. Laws of the Regular Session, 1971, Vol. 2, pp. 2636-7 8

Laws, 1974:

Ch. 621 4

Laws, 1971:

Ch. 101 6

Ch. 102 6

Ch. 946 ..... 6, 8

	PAGE
Laws, 1970:	
Ch. 566	6
Ch. 567	6
Ch. 568	6
Laws, 1968:	
Ch. 931	6
N.Y. CPLR, Art. 78	49
N.Y. Labor Law:	
§ 501	9
§ 593	9
NYSSL:	
§ 131(4)	6
§ 131(5)	6, 9
§ 131(11)	*in passim*
§ 158(a)	6, 10, 44
NYSSL:	
§ 159	6
§ 164	6
§ 207	45
§ 349-a	6
§ 350-b	6
§ 350-c	6
§ 350-d	6
§ 350-e	6, 9
§ 350-f	6, 9
§ 350-g	6, 9

	PAGE
§ 350-h	6
§ 350-i	6
§ 350-k	6
29 CFR:	
§ 57.13	9
45 CFR:	
§ 220.35	9
§ 233.11	9
§ 233.100(a)	7, 9, 54
18 NYCRR:	
§ 351.1	5, 6, 22, 30, 44, 49
§ 351.2	5-6, 49
§ 351.3	49
§ 351.4	48, 49
§ 351.5	6, 45, 49
§ 351.6	6, 45, 49
§ 351.8	6, 20, 48, 49, 51
18 NYCRR:	
§ 352.12	9
§ 352.30(d)	7
§ 358.4	48
§ 358.5	48
§ 358.16	48
§ 358.18	48
§ 359.2	48

PAGE

§ 369.2 9
§ 370.4 .....6, 23, 30, 45, 47-8, 49
§ 385.3 9
§ 385.4 9
§ 385.6 .....9, 45-6
§ 385.7 .....*in passim*
§ 388.2 9
§ 388.3 9
§ 388.6 9
§ 388.9 9

OTHER AUTHORITIES

Bowen and Finnegan, *The Economics of Labor Force Participation* (Princeton U. Press 1969) 39-40

Bureau of Labor Statistics, *Work Attitudes of Disadvantaged Black Men* (1972) 38

Bureau of National Affairs, *Turnover and Job Satisfaction* (1970) 38-9

Cooley, *A treatise on the Constitutional Limitations* (8th ed. 1927 [Carrington, ed.] Vol. II) 28

Goodwin, *Do the Poor Want to Work? A Social-Psychological Study of Work Orientations* (Brookings Inst. 1972) 40

Irelan, LAW INCOME LIFE STYLES (HEW 1967) 17, 38

Mason, A.T., BRANDEIS, A FREE MAN'S LIFE, (Viking Press, 1946) 17

J. Wigmore, *Evidence* (3d ed. 1940) Vol. IX 21, 33, 53

WORK IN AMERICA, Report of a Special Task Force to the Sec'y of HEW (MIT Press 1973) 17, 38

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1137

ABE LAVINE,* individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLANT

Opinions Below

The opinion of the three-judge District Court for the Southern District of New York in *Milne, et al.* v. *Berman,*

---

* On July 31, 1975, Stephen Berger succeeded Abe Lavine as Commissioner of the New York State Department of Social Services. He is automatically substituted as appellant pursuant to Rule 48 of the rules of this Court.

et al., dated November 11, 1974, granting declaratory and injunctive relief (A. 563-78) is reported at 384 F. Supp. 206.

The memorandum opinion and order of the three-judge District Court dated January 22, 1975, granting a partial stay pending this appeal (A. 699-700) is not reported.

Jurisdiction

The final judgment and order appealed from was entered in the District Court on December 13, 1974 (A. 581-3). The notice of appeal to this Court was filed in the District Court on January 10, 1975 (A. 701-4), the jurisdictional statement was filed March 10, 1975, and probable jurisdiction was noted on June 30, 1975. The jurisdiction of this Court rests on 28 U.S.C. § 1253.

Statute and Regulation Involved

New York Social Services Law § 131(11) provides:

"Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity for the purpose of qualifying for home relief or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation. Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."

18 New York Code of Rules and Regulations § 385.7, Regulations of the New York State Department of Social Services, provides:

"Sanctions. (a) a person who:

(1) voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance or a larger amount thereof; or

(2) without good cause fails or refuses to undergo a necessary medical examination or treatment; or

(3) is required under this Part to receive manpower services and certification and without good cause fails or refuses to accept manpower services and certification; or

(4) is required under this Part to pick up his check semi-monthly at the State Employment Service and without good cause fails or refuses to do so; or

(5) without good cause fails or refuses to accept referral to and participate in a vocational rehabilitation program, shall be disqualified from receiving assistance for 30 days thereafter and until such time as he is willing to comply with the requirements of this Part, except that an applicant for or recipient of HR who voluntarily terminated employment or reduced his earning capacity shall be disqualified from receiving assistance for 75 days thereafter and until such time as he is willing to comply with the requirements of this Part."

Questions Presented

1. Whether the Constitution of the United States prohibits a state legislature from defining eligibility for assistance in a totally state-funded program by the use of a rebuttable presumption when the fact to be proved is

logically connected to the facts giving rise to the presumption and when the fact to be proved is entirely within the knowledge and control of the applicant?

2. Whether an applicant for public assistance who could present evidence to overcome a rebuttable presumption as to his eligibility to the local social services agency at any time is deprived of due process of law because a state fair hearing decision may be rendered as long as 90 days after request?

3. Whether the Court below had the power to enjoin state statutory provisions affecting applicants for AFDC when there were no plaintiffs who were applicants for AFDC, when the provisions affecting AFDC applicants are substantially different from those affecting HR applicants and when it did not examine the applicable federal law which affects the eligibility of AFDC applicants?

Statement

This appeal is from the final judgment and order (A. 581-3) of a three-judge District Court for the Southern District of New York (OAKES, C.J., BONSAL, WYATT, D.JJ.) entered December 13, 1974, which declared a state statute (N.Y. Social Services Law [NYSSL] § 131[11]*) and regulation (18 N.Y. Code of Rules and Regulations [NYCRR] § 385.7) invalid insofar as they provide (NYSSL § 131[11] *ante* at p. 2):

> ". . . Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity shall, unless otherwise required by federal law or regulation, be deemed to have voluntarily terminated his employment or reduced his earning capacity for the purpose of qualifying for such assistance or a larger amount thereof, in the absence of evidence to the contrary supplied by such person."*

* When the District Court refers to NYSSL § 131(10) it refers to the present subdivision (11) which was renumbered without substantive change by L. 1974, Ch. 621 § 2.

The order permanently enjoined appellant and the other defendants from enforcing the statute and regulation declared invalid. The other defendants, the Commissioners of Social Services in Westchester and Ontario Counties who were charged with the application of the invalidated statute and regulation, did not appeal separately from the judgment.

A. State Statute and Regulation

The statute and regulation that were declared partially invalid by the District Court condition eligibility for public assistance for persons who have recently voluntarily terminated employment. If that termination is for the purpose of obtaining public assistance or an increased grant, the person is not eligible for assistance for seventy-five days. The statute creates a rebuttable presumption that if there is a voluntary termination of employment and an application for public assistance within seventy-five days, the purpose of that termination was to receive public assistance. It specifically provides that the applicant can introduce evidence to show that that was not his purpose.

Rebuttal evidence may be produced at the local Social Services office at the first interview or at any time thereafter, just as any verification of data relating to eligibility may be produced. 18 NYCRR §§ 351.1(a)-(b); 351.2(a)-

* The parallel regulatory language contained in 18 NYCRR § 385.7 is reproduced at the beginning of this brief, *ante* at p. 3, *supra*.

(e)(1); 351.5—351.6(b); 351.8; 370.4(a), (b).* The applicant always bears the burden of proving eligibility. See, e.g., 18 NYCRR §§ 351.1(b)(2), 370.4(a), (b) (*post* at pp. 1a, 6a-7a). Production of information relating to employment is specifically required. 18 NYCRR §§ 351.1(b)(2)(ii)(f); 370.4(b) (*post* at pp. 1a-2a, 7a). The purposes behind a person's terminating his employment are always within his knowledge and frequently unknown to others.

As part of its general policy of requiring all able-bodied persons to support themselves,** the Legislature limited eligibility of persons who had voluntarily terminated their employment to those who did so without intending to rely on public assistance and to those who have been unemployed for 75 days or longer. NYSSL § 131(11).

This limitation applies to applicants for home relief, whose eligibility is defined (NYSSL § 158[a]***):

> Any person unable to provide for himself, or who is unable to secure support from a legally responsible relative, who is not receiving needed assistance or care under other provisions of this chapter, or from other sources, shall be eligible for home relief."

Such persons, by definition, are not eligible for categorical assistance under the Federal Social Security Act, and the grant of assistance is solely a question of state

---

* These sections of the Regulations of the New York State Department of Social Services are attached as an appendix to this brief, *post* at pp. 1a-7a.

** E.g. L. 1968 ch. 931; L. 1970 chs. 566-568; L. 1971 chs. 101, 102, 946; NYSSL §§ 131(4), (5) (eligibility), 159, 164 (work relief), 349-a (income exemption), 350-b-i (work incentive), 350-k (public work projects). Also see *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405 (1973).

*** New York's Social Services Law appears as Book 52-A of McKinney's Consolidated Laws of New York Annotated and in the 1974-1975 supplement thereto.

legislative policy. Specifically, these persons are not dependent children or their guardians (42 U.S.C. §§ 601 et seq.) or aged, blind or disabled (42 U.S.C. §§ 1381 et seq.) and thus have no inherent impediment to self-support. In fact, as far as Congress is concerned, whether they are unemployed, are fired, or quit their jobs, they are not eligible for federal assistance.

The statute also applies to recipients of Aid for Families with Dependent Children (hereinafter AFDC). NYSSL § 131(11). The presumption is qualified by the phrase—"unless othewise required by federal law or regulation." *Id.* The Commissioner of Social Services interpreted the New York Statute in conjunction with 42 U.S.C. § 607(b)(1), 45 CFR § 233.100(a)(3)(i)(ii), which define families as eligible for AFDC for unemployed fathers (AFDC-U) when the father has been unemployed for at least 30 days and has not within the last 30 days refused a bona fide offer of employment or training for employment. In so doing the Commissioner reduced the period giving rise to the presumption and the period of ineligibility for recipients of AFDC to 30 days. (18 NYCRR § 385.7, *ante* at p. 3). Thus, an applicant for AFDC who voluntarily terminated his employment and applied for AFDC more than 30, but not less than 75, days after that termination would not be required to rebut the presumption. Similarly, a person who did terminate his employment for the purpose of obtaining AFDC assistance would be eligible for AFDC on the 31st day after the termination. In New York, even the 30-day sanction does not apply to needy children, who are immediately eligible for assistance even though the caretaker adult voluntarily terminated employment for the purpose of obtaining public assistance. 18 NYCRR § 352.30(d). The Court below apparently did not understand the regulations since it consistently referred to the 75-day sanction period as applicable to AFDC recipients. (Op. A. 565, 569, 574, 578 n. 7; final judgment and order, A. 583).

The intent of the Legislature in enacting the provision was to deter persons from leaving employment without being able to sustain themselves for a reasonable period of time on the assumption that they would receive public support. As the Governor stated in approving the bill (L. 1971, ch. 946):

> "The bill is designed to provide increased opportunities for gainful employment to persons who are presently dependent upon the welfare system and to deter gainfully employed persons from leaving their jobs in order to obtain public assistance, as I recommended to the Legislature in my Special Message on Welfare and Work." (McKinney's Session Laws of New York 194th Session, Laws of the Regular Session, 1971, Vol. 2, pp. 2636-7.)

The Legislature found that the availability of public assistance could be a disincentive to work and self-sufficiency. This statute is precisely designed to counteract that situation, because it does not affect the eligibility of persons who lost their employment involuntarily or who terminated their employment without regard to the availability of public assistance. A further purpose was to confine the finite sums appropriated for relieving poverty to the use of persons *unable* to provide for themselves.

Although public assistance is intended to meet basic needs of persons unable to support themselves, some employable persons may voluntarily terminate their employment, intending to support themselves by public assistance. This may not be a long-term goal. They may intend only to rely on welfare until they obtain new or more desirable employment. Nonetheless, this can cause an unnecessary drain on public resources. This statute provides notice to such persons who are, by definition, deterrable that they will not be eligible for public assistance in such a situation.

This statute is a concomitant part of New York's requirements that persons able to support themselves do so. An employable person receiving assistance is required by federal, as well as state, law to register for manpower services, training and employment (42 U.S.C.A. §§ 602 [a][19], 607[b]; 45 CFR §§ 220.35, 233.11, 233.100[a][3], [5], [6], [c][1][v]; NYSSL §§ 131[5], 350-e, 350-g; 18 NYCRR §§ 385.3-.4, 385.6, 385.7, 388.2, 388.3, 388.6[g], 388.9), accept employment (42 U.S.C.A. §§ 602[a][19][F], 607[b][1][B]; 45 CFR § 233.100[a][3][ii]; NYSSL § 131[5]; 18 NYCRR §§ 352.12, 369.2[f][7], 385.3-.4, 385.6, 385.7, 388.9) and not voluntarily terminate employment (42 U.S.C. §§ 602[a][19][F], 633[g], 29 CFR § 57.13, 45 CFR § 233.11, NYSSL § 131[11]; 18 NYCRR § 385.7. A recipient participating in the mandatory Work Incentive Program (WIN) who voluntarily terminated his employment would be ineligible for 90 days and, subsequently, for 6 months. (29 CFR § 57.13; 18 NYCRR § 388.9).

This statute also complements the public policy enunciated in the Labor Law for unemployment insurance, e.g., N.Y. Labor Law §§ 501, 593(1)(a). Persons who voluntarily terminate their employment without good cause are not eligible for unemployment insurance. *Id.* The statute reflects a policy that persons are responsible for supporting themselves wherever possible. If such persons automatically were eligible for public assistance, the Social Services Law would undermine the Labor Law. By creating a period of seventy-five days of ineligibility for persons who voluntarily terminate employment without good cause for the purpose of receiving public assistance, the deterrent effect of the Unemployment Insurance Law is not diluted, while destitute persons are not permanently cut off from public welfare funds.

B. The Plaintiffs

All of the plaintiffs and applicants for intervention in the District Court were applicants for receipt of public

assistance in the HR category. NYSSL § 158 (*ante* at p. 6). Since Congress has not deemed such persons appropriate recipients of federal assistance, they are supported solely by State and local funds and eligibility for those funds is defined solely in State Law. All of the plaintiffs are individual recipients, not members of an assistance family or group.*

1. *Ronald Milne*

The original plaintiff in this case, Ronald Milne, claimed that he did not voluntarily terminate his employment but was forced to resign as a security guard at Columbia University or be faced with a charge of serious misconduct (Pl. aff. A. 11). He resigned on November 9, 1973, and was denied assistance by the Westchester County Department of Social Services on the basis of NYSSL § 131(11) on November 16, the day he applied (Pl. affs. A. 265-6, 11). He had that same day applied for unemployment insurance compensation (Pl. aff. A. 265) which was denied on November 29 (Pl. aff. A. 266).

Milne requested a fair hearing of the State Department of Social Services on December 13, and it was scheduled for January 9, 1974 (Pl. aff. A. 267); but on that date the County Commissioner reconsidered his decision and determined Milne to be eligible as of the date of application. Meanwhile, on January 3, the Department of Labor reversed its initial decision and granted Milne unemployment insurance compensation. The State Commissioner of Social Services had never taken any action against Milne and the local Commissioner conceded his error in applying the statute to him four months before the three-judge Court hearing.

---

* While the Beverly brothers apparently lived together, they did not live with a caretaker relative nor seek assistance as a family. In fact, only Joseph Beverly ever applied for assistance (*post* at p. 13).

2. *Robert C. Lee*

Intervention on the part of Robert C. Lee was ordered by Judge Wyatt on March 27, 1974. Lee's employment as a machinist had been terminated on January 14, 1974, " 'due to a combination of excessive excused and unexcused lateness and absenteeism which proved discriminative to . . . [the] production schedule' " (Compl't A. 79; Pl. aff., A. 63-4; Pl. aff. exh. B, A. 71). He had failed to pay his rent from November, 1973, through January, 1974, and on January 29, 1974, he applied for public assistance. The Westchester County Department of Social Services denied his application on January 31. Apparently the local agency had found that he deliberately provoked his discharge to obtain public assistance (Pl. aff. exh. C, A. 72).

On February 4, 1974, Mr. Lee filed an order to show cause and an application for a temporary restraining order in the District Court, which granted the restraining order, prohibiting the enforcement of the provisions of NYSSL § 131(11) against Intervenor Lee (Order, A. 60-2). The next day he requested a fair hearing (Op. n. 5, A. 578). The hearing was scheduled on April 4, 1974, but was adjourned upon a misunderstanding on the part of the local agency that Lee's status as a plaintiff in the Federal proceeding prevented the Department from holding a hearing on eligibility (Op. n. 5, A. 578; dft. aff., A. 450). However, during all this time Mr. Lee was receiving public assistance benefits pursuant to the District Court's order. On April 26, 1974, he defaulted at the hearing. The State Commissioner thus did not apply the challenged statute to Lee, who, receiving benefits by Court order, failed to pursue the due process hearing he claimed was his due.

3. *Douglas Streeter*

Leave to intervene as a plaintiff was also granted to Streeter on March 27, 1974 (Order, A. 49-51). On December 5, 1973, having sought public assistance after termi-

nating employment, he obtained a job at a nursing home, but failed to report to work over the New Year weekend, claiming to be ill. He reported to work on January 4, to pick up his paycheck and was notified that he had been suspended. Streeter reapplied on January 13, to the Westchester County Department of Social Services (Pl. aff., A. 227-8). On January 16, the local agency found that he was ineligible for home relief (Pl. aff. Ex. A, A. 282).

Meanwhile, on January 14, after applying for public assistance, Streeter had applied for unemployment insurance compensation. It was denied on February 7, because he had failed to call his job and because he had not been employed long enough to qualify for such compensation (Pl. aff., A. 278, 280).

On January 25, 1974, the District Court ordered that Streeter be given relief pending the decision on the preliminary injunction (Order, A. 49-51). Thereafter, on January 28, Streeter requested a fair hearing (Pl. aff., A. 280).

A fair hearing was originally scheduled on February 28, but a month's adjournment was granted to the local agency because of the pendency of this proceeding, as with Lee (*ante* at p. 11), and on assurance that Streeter was actually receiving assistance. A hearing was held on March 20 (Pl. aff., A. 280-1; deft. aff., A. 451) and on April 4, the decision reversing the local agency was rendered (Dft. aff. Ex. C, A. 459-60). Streeter was found eligible for assistance. The State Commissioner found that NYSSL § 131(11) was improperly applied to Streeter and ordered his continued receipt of assistance.

4. *The Beverly Brothers*

Four brothers, Joseph, Odell, John and Willie Beverly were granted leave to intervene as plaintiffs on the complaint that Social Services Law § 131(11) had been unconstitutionally applied to them by the Ontario County Social Services Department, making them ineligible for

public assistance (Docket entry 4/10/74, A. 5). Actually only Joseph Beverly had ever applied for public assistance (Hearing transcr. deft. aff. Ex. E, A. 475). Since only Joseph worked regularly (Hearing transcr. deft. aff. Ex. E, A. 469-70), it is not clear that the presumption contained in NYSSL § 131(11) would have been applied to the others.

Joseph Beverly quit his job with a produce company on Friday, January 25, 1974, and was paid his final wages on that day. He claimed that after eviction from one place, he had no other place to live (Pl. aff., A. 151). The following Tuesday, he applied for public assistance; it was denied on the same day. No request for a fair hearing was received until February 26. A hearing was held on March 14 (Transcr. deft. aff. Ex. E, A. 463-78) and a decision denying assistance was rendered on March 28. The Commissioner found that Joseph Beverly had a place to live and had terminated his employment for the purpose of obtaining public assistance (Dft. aff. Exs. D & E, A. 461-2, 476-8).

5. *Applicants for Intervention*

Several times during the pendency of this litigation, other persons sought to intervene as named plaintiffs. At appellees' request the appendix includes papers submitted on their behalf.

Roy Levee was the first of these (see order to show cause, A. 35-37; Levee aff., A. 38-41; Levee aff. Exs. A-C, A. 42-44, Gray aff., A. 45-8). On January 15, 1974, Levee was originally denied assistance by the New York City Department of Social Services based on NYSSL § 131(11) (*Id.*). Ten days later, that Department agreed not to subject Mr. Levee to the sanctions of NYSSL § 131(11) and intervention was denied (order, A. 104).

Shirley Miller originally sought intervention on the ground that NYSSL § 131(11) had been invoked in the

denial of assistance to her by the Dutchess County Department of Social Services (see order to show cause, A. 87-8; Miller aff. 89-94; Miller aff. Exs. A-D, A. 95-9). She later abandoned that motion.

Ethel Reid and Anthony Brownlee sought to intervene in this action on April 19, 1974 (Docket entries, A. 4, notice of motion, A. 216). Their motion was denied as moot on April 24 by Judge Wyatt (Docket entries, A. 4). In the opinion of the three-judge Court that motion mistakenly was regarded as open (Opinion, A. 574-5) and, as such, was redenied (*Id.*). At the time Ethel Reid sought to intervene she had been re-hired by her original employer and had received unemployment compensation in the interim (Reid aff., A. 289).

Anthony Brownlee did not sign any documents before the District Court. Edmund J. Byrnes, an attorney allegedly familiar with a prior proceeding, filed an affidavit and exhibits (A. 296-305) in which he stated he had not seen Brownlee for seven months before the inception of the suit into which Byrnes sought to intervene him (Byrnes aff. 296).

C. Prior Proceedings

This action was begun by Ronald Milne's filing his summons and complaint on December 19, 1973, on his own behalf and on behalf of other members of a putative "class of needy persons residing in New York State who have been or may be disqualified from receiving public assistance for a period of seventy-five days after the termination of their employment or reduction in earnings due to enforcement . . . by defendants of Section 131[11]." (Amended Complt., A. 16). Numerous proceedings involving intervention, requests for temporary restraining orders and discovery were held before the single-judge District Court (WYATT, D.J.) between January 10 and May 10,

1974, when the three-judge District Court convened, and heard arguments on the cross-motions for summary judgment and on the class action order (Docket entries, A. 1-5).

On February 20. 1974, upon the agreement of defendants, Judge Wyatt had determined that a three-judge Court should be convened pursuant to 28 U.S.C. §§ 2281, 2284 (Order, A. 100-3).

On November 11, 1974, the three-judge Court (OAKES, C.J,. BONSAL, WYATT, D.JJ) issued its opinion that the presumption contained in the second sentence of NYSSL § 131(11) and 18 NYCRR § 385.7 was unconstitutional and should be enjoined (A. 563-78). The opinion closed, "Settle an order or orders" (A. 575). Both sides submitted proposed orders differing on the definition of the class of persons affected. Appellees, relying on the Court's opinion, included recipients of AFDC. Appellant defined the class as applicants for HR, because no plaintiff had applied for AFDC, because the regulation affected AFDC recipients differently, and because federal law had an impact on the eligibility of AFDC applicants relevant to this statute which it did not have on applicants for the HR program.

Before the order was signed appellees brought a motion to cite appellant for contempt, claiming that the opinion itself was an order (A. 584-604); defendants opposed (A. 605-32).

On December 20, 1974, the Court ordered (Transcr. of hearing, A. 690):

> "Motion granted to the extent that defendant Lavine will cause to be sent a letter on or before January 6, 1975, to all those members of the class denied home relief assistance since November 12, 1974, advising such members that they may reapply for such assistance retroactive to November 12, 1974, and are free to ask for legal advice as they may see fit.
>
> "Otherwise, motion denied . . ."

On December 13, 1974, the three-judge Court had entered a final judgment and order (17a) which enjoined the operation of the statute and regulation in the case of AFDC, as well as HR, applicants (Order, A. 581-3). On January 22, 1975, upon the request of appellant, the Court stayed so much of the order as applied to AFDC applicants pending the determination of this appeal (Memo. op. and order, A. 699-700).

The notice of appeal to this Court was filed on January 10, 1975 (A. 701-4).

D. The Opinion Below

The court below invalidated the rebuttable presumption contained in NYSSL § 131(11) as violating a substantive concept of due process of law (Op. A. 569):

> ". . . because there is an insufficient connection between the known fact, that is, application for public assistance within 75 days of an appellant's termination of employment, and the fact presumed by the statute, that is, that the applicant terminated his employment for the purpose of qualifying for public assistance."

The Court stated it was not reaching the question of procedural fairness in the application of the statute or the claim under the equal protection clause that the classification of persons who voluntarily terminate their employment and contemporaneously (within 30 days for AFDC and 75 for HR) apply for public assistance was irrational (Op. A. 567, 573).

The Court based its granting of summary judgment on a finding "that poor people : . . have the same desire to work and to obtain the fruits of work as the non-poor" (Op. A. 570). That finding was itself based on two essays dealing with attitudes of and about poor people, in general (A. 571), portions of which had been reproduced as exhibits on plaintiffs' motion for summary judgment in what the

Court called a " 'Brandeis-brief.' "* (A. 573). See WORK IN AMERICA, Report of a Special Task Force to the Secretary of Health, Education and Welfare (MIT Press 1973) (Pl. Ex. A, A. 327-39); Irelan, LOW INCOME LIFE STYLES, U.S. Department of Health, Education and Welfare, Social and Rehabilitation Service, Office of Research and Demonstration (1967) (Pl. Ex. F, A. 393-407). Neither essay examined the implications of the objective criteria giving rise to this presumption—that the person voluntarily terminated his employment and contemporaneously applied for public assistance. The material quoted by the Court below was irrelevant to such persons (A. 571):

> ". . . The facts are that most poor people are not on welfare and the majority of poor people not only want to work, but do work, year round and full time . . ."

The Court suggested that the former level of assistance of $84 a month (op., A. 569) for one person in addition to a shelter allowance reflecting the actual cost** (See e.g. *Van Lare* v. *Hurley*, —— U.S. ——, 44 L.Ed. 2d 208 [1975]) was two little to attract potential recipients. Without identifying the income with which it was comparing public assistance. It concluded (A. 570):

> ". . . we think it cannot be assumed that any substantial number of people would terminate their employment in order to receive assistance . . ."

---

* Those famous briefs included extensive economic data to *support* findings by State legislatures, not to outfit the judiciary as a rival in policy determination. E.g. Mason, Alpheus Thomas, BRANDEIS, A FREE MAN'S LIFE (Viking Press, 1946) pp. 245-53. The legislation which Brandeis defended had been invalidated by Courts which ". . . had confidently denied any 'reasonable' relation between the legislation and the stated objective . . ." (*Id.* at 248). Professor Mason could have been characterizing the decision below.

** That amount is free of withholding and other deductions concomitant with employment.

Yet Joseph Beverly who had been evicted for failure to pay rent (Pl. aff., A. 150) testified that it was not worth it for him to continue to work because his shelter costs were too high (transcr. dft. Ex. E, A. 473). He applied for public assistance almost immediately (transcr. dft. Ex. E, A. 467; Pl. aff., A. 151-2).

The Court also criticized the supposedly low level of grants of assistance, noting that in New York City in 1972, the average grant per HR household was $158.41 or $74.40 per person (Pl. Ex. C, A. 375; op., A. 570). However the grant level is not an accurate reflection of the income of recipients, but is frequently a supplement to diverse other sources of income. For instance, the HR category includes intact families with an employed father whose income is less than the appropriate level of assistance which the Court denigrated. In fact, of the 142, 123 individuals receiving HR in New York City in 1972, 60,531 were children (Pl. Ex. C, A. 375). Another group of HR recipient families included within the figures used by the Court are those receiving assistance in the first 30 days of the father's unemployment when they are not eligible for federally aided assistance. Such persons would have overcome the presumption attacked here.

It was the Court's opinion that the primary reasons for persons' terminating employment would be for other than obtaining assistance (A. 570). The Court went further and suggested that illness was the most common reason for termination; but the State Commissioner had issued directives stating that if the termination was because of illness the presumption was not applicable (Dft. aff., A. 447-8; dft. Exs. A & B, A. 454-8). The Court did not acknowledge this administrative directive that had been issued to prevent any further misapplication of § 131(11) such as had occurred in Westchester County in the case of Milne and Streeter (see *ante* at pp. 10, 11-12). In those cases, there was no voluntary termination and the presumption had been improperly invoked. Although the Court criticized

this misapplication (Op. A. 572, A. 577 n. 4), the holding rests squarely on a finding of invalidity of the statute on its face.

While not strictly relating its statement to any legal conclusion, the opinion disapproved of the length of time that the presumption applied—"to the hungry 75 days is sufficient time in which to starve" (A. 572). Nonetheless, the Court similarly enjoined the 30-day presumption applicable to AFDC cases, without any discussion (A. 569, 574). Furthermore, the facts of the plaintiffs' cases did not support the Court's theory that the statute was regularly applied to persons who terminated employment and ". . . subsequently become . . . impoverished." The longest any named plaintiff waited to apply for public assistance after termination was 15 days, in the case of Lee (*ante* at p. 11). Joseph Beverly applied on the second business day after receiving his last pay (*ante* at p. 13); Milne applied 7 days after termination (*ante* at p. 10) and Streeter, 9 days (*ante* at p. 12).

Although the Court did not evaluate the hearing procedures the writer of the opinion stated in the margin (A. 577 n. 5):

> "In practice, however, this 'rebuttable' presumption becomes irrebuttable. Once a person has been denied Home Relief, he may refute the statutory presumption at a subsequent hearing. Plaintiffs' affidavits indicate that the hearing is normally scheduled three to four weeks after it is requested. Under existing procedures, defendants then have up to 60 days to render a decision. *See Nelson* v. *Sugarman,* 361 F. Supp. 1132 (S.D.N.Y. 1971). Quite obviously, a determination of whether the statutory presumption has been rebutted is totally meaningless when it occurs after the 75 day waiting period. This Catch-22 approach to procedural due process is evidenced in the record by the case of intervenor Lee."

Judge Oakes used as an example an inaccurate account of the hearing accorded Robert Lee. He criticized the lateness of the hearing (A. 577 n. 5), but Lee had been receiving assistance since the day *before he requested* a fair hearing. The intemperate criticism of the State hearing procedure is inexplicable since it was the Court's order that required Lee to receive assistance pending the final determination in this case (Order, A. 60-2). Ultimately, Lee defaulted at the hearing (*ante* at p. 11).

The only named plaintiff who was not receiving assistance at the time the fair hearing was held was Joseph Beverly and that hearing was scheduled promptly. Beverly's request was received on February 26, 1974, a hearing was held on March 14, and a decision rendered on March 28, (Dft. aff. Exs. D & E, A. 461-78).

Furthermore, the Court did not substantiate its implication that the applicant could rebut the presumption only at a State fair hearing (Op. n. 5, A. 577). Final decisions on eligibility are not to be made without full information and the applicant may request additional time for production of evidence. 18 NYCRR § 351.8 [b], [c] [3] (*post* at pp. 5a-6a). Even after termination, applicants may reapply on the basis of new evidence.

The rule upon which the Court purportedly relied to invalidate the statute was this Court's statement in upholding a rebuttable presumption in *Bandini Petroleum Co.* v. *Superior Court*, 284 U.S. 8, 19 (1931):

> ". . . The legislative presumption is invalid when it is entirely arbitrary, or creates an invidious discrimination, or operates to deprive a party of a reasonable opportunity to present the pertinent facts in his defense . . ."

The Court below also relied on two decisions of this Court invalidating presumptions because they were *irrebuttable* (A. 568-9). *United States Dept. of Agriculture* v. *Murry*, 413 U.S. 508 (1973) (conclusion that a household is not in need of food stamps from fact that one person over 18 is claimed as a dependent for Federal income tax purposes by a person not a member of the household); *Vlandis* v. *Kline*, 412 U.S. 441 (1973) (conclusion that college student is not a Connecticut resident from fact that he was not a resident the year before he was admitted).

While the Court below did recognize the common use of the rebuttable presumption where the burden is ". . . put on the party with peculiar means of knowledge" (J. Wigmore, EVIDENCE § 2486 at Vol. IX p. 275 [3d ed. 1940]), it rejected this reasoning, stating that it was ". . . a question of policy" whether to employ the presumption (Op. A. 572). Not approving of the policy adopted by the Legislature, it substituted its own.

The presumption at issue here is an evidentiary rule in an administrative proceeding (see 18 NYCRR part 351, in *post* at pp. 1a-6a) at which the applicant bears the burden of proof and of going forward. Therefore, the presumption switches neither of these burdens. Nevertheless, the Court below cited as authority for its decision three decisions of this Court concerning the validity of a presumption against a defendant in a criminal case by which the burden of proof was reversed and the special procedural rights of an accused limited (Op. A. 568). *Leary* v. *United States*, 395 U.S. 6 (1969); *United States* v. *Romano*, 382 U.S. 136 (1965); *Tot* v. *United States*, 319 U.S. 463 (1943).

On these grounds, the Court held that the statutory presumption was irrational (Op. A. 569) and enjoined its enforcement (Order, A. 581).

Summary of Argument

When an applicant for public assistance applies at a local welfare office in New York State, he is required to "furnish evidence to provide verification of those factors which affect eligibility." 18 NYCRR § 351.1(b)(2)(ii) (*post* at p. 1a). If, like plaintiffs, he is ineligible for federally aided assistance, he is an applicant for Home Relief (HR) supported by State and local funds. Eligibility is defined in State law. An applicant for HR has the "responsibility . . . to provide verified information concerning his previous maintenance, loss of income and the extent and duration of current need . . ." 18 NYCRR § 370.4(a) (*post* at p. 7a). If he voluntarily terminated his job for the purpose of obtaining public assistance, he is ineligible for 75 days. If he voluntarily quit his job less than 75 days before he applies, he is subject to the invocation of the presumption contained in NYSSL § 131 (11): He is presumed to have terminated his employment for the purpose of obtaining public assistance, unless he produces evidence to the contrary.

Far from the oppressive irrational speculation perceived by the Court below, this presumption is eminently reasonable, and simple to overcome when the facts warrant discarding it.

To begin with, the statute which the presumption supports is carefully designed to achieve valid legislative goals: (1) requiring people to support themselves for a period after voluntarily terminating their employment, (2) deterring people from voluntarily terminating employment without the means of subsistance for the near future, and (3) apportioning the finite sums available for the relief of poverty to the use of persons who are most in need and who are incapable of supporting themselves.

Secondly, the facts proven which give rise to the presumption are rationally related to the fact presumed. The

voluntary termination of a job and the application for public assistance occur in a relatively short period of time. Employment and public assistance are alternative means of support. If the applicant has voluntarily given up one means and voluntarily sought the other, it is rational to presume he intended to obtain public assistance when he gave up self-support, unless he produces evidence to the contrary.

The presumed intent need not be universally present in fact for the presumption to be constitutional; that requirement, inappropriately applied by the court below, is more suitable to irrebuttable presumptions. The District Court opinion, if upheld, would invalidate the use of a *rebuttable* presumption against an applicant for a state benefit. This Court has never invalidated the use of a rebuttable presumption in a civil proceeding. On the contrary, in cases challenging irrebuttable presumptions as criteria for eligibility, the Court has held that the remedy for unconstitutionality is to give the applicant a chance to rebut the presumption.

This statute does just that. It specifically provides that ". . . evidence to the contrary" may be supplied (NYSSL § 131[11]).

If the presumption is not justified, such evidence is easy for the applicant to produce. His own statement might be sufficient if he can explain why he terminated his employment without enough resources to support himself for more than a short time. Such evidence always is within the control of the applicant. On the other hand, it would not be feasible for the social services agency to establish affirmatively in every case the reasons why the applicant left his job. The presumption therefore renders the public assistance program administratively workable. In so doing, however, the presumption does not shift the burdens of proof and of going forward; they already are on the applicant, as is usual in application procedures. Rebuttal evidence may be introduced at any time in the local office. Even if the applicant is found ineligible, he

may again present that evidence at the fair hearing conducted by the State Department of Social Services.

The statute and regulation also apply to applicants for AFDC, but the effect on them is very different from that on HR applicants. In the case of an application for AFDC the presumption arises only if assistance is sought within 30, rather than 75, days of voluntary termination of employment, and AFDC recipients are ineligible for assistance for only 30, rather than 75, days after voluntary termination of employment (18 NYCRR § 385.7[5]) (*ante* at p. 3). The effect of this presumption on AFDC applicants is less restrictive than the absolute sanction imposed by Congress on the same family. If eligibility is claimed because a father is unemployed, the entire family is ineligible until he has been unemployed for at least 30 days. Under the WIN program, AFDC recipients are similarly sanctioned if they voluntarily terminate their employment.

The District Court not only invaded the substantive province of the Legislature, but procedurally it overreached as well. All plaintiffs and applicants for intervention were seeking assistance for themselves as individuals under the HR category. Nonetheless the District Court declared invalid separate provisions of the statute and regulation affecting applicants for AFDC.

POINT I

The rebuttable presumption governing the receipt of evidence of eligibility by a local welfare office is based on a rational relationship between the fact proven and the fact presumed.

The statutory presumption at issue (NYSSL § 131[11], *ante*, at p. 2) is directly related to its purposes: (1) requiring people to support themselves for a period after voluntarily terminating their employment, (2) deterring people from voluntarily terminating employment without

the means of subsistance for the near future, and (3) apportioning the finite sums available for the relief of poverty to the use of persons who have been unable to provide for themselves. The statute is precisely drawn to affect only the persons who could have been deterred by its provisions. The presumption is triggered only when a person *voluntarily* terminates his employment *and* within a short time applies for public assistance. The voluntary termination of employment combined with a contemporaneous allegation of destitution is some evidence that at the time of termination the applicant intended to seek public support. At the very least, there is a rational relationship between the proven fact and the presumed fact. But once triggered the statute provides that the presumption can be rebutted—an easy matter since the applicant always has the knowledge of the relevant facts.

A. A Rebuttable Presumption in a Civil Case Is Valid as Long as it Is Not Purely Arbitrary

The standard by which the validity of a rebuttable presumption is measured was enunciated by this Court in *Mobile J. & K.C.R. Co.* v. *Turnipseed* (219 U.S. 35, 43 (1910):

> "That a legislative presumption of one fact from evidence of another may not constitute a denial of a due process of law or a denial of the equal protection of the law it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. So, also, it must not, under guise of regulating the presentation of evidence, operate to preclude the party from the right to present his defense . . ."

Under that test, the presumption at issue is valid, for it is rational, and the statute specifically provides that the

applicant can produce evidence to the contrary. NYSSL § 131(11).

Turnipseed, supra, involved a wrongful death action against a railroad in which, under a state statute, "proof of injury inflicted by the running of locomotives of cars of [a railroad] company . . . shall be *prima facie* evidence of the want of reasonable skill and care." The presumption was upheld as an evidentiary rule well within the power of the state legislature (219 U.S. at 42-4).

The *Turnipseed* doctrine has been consistently followed; indeed this Court has never invalidated a rebuttable presumption in a civil case. See *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61, 81-3 (1911) (upholding state law that proof of pumping water from mineral springs was *prima facie* evidence that the pumping was for the purposes prohibited in a New York statute); *Reitler* v. *Harris,* 223 U.S. 437 (1912) (upheld state statute that made an entry of forfeiture on a public tax record *prima facie* evidence of lawful service of forfeiture notice); *Luria* v. *United States,* 231 U.S. 9, 25-7 (1913) (upheld Congressional statute which created a rebuttable presumption that a recently naturalized citizen had not intended to reside in the United States permanently from the fact of taking up a permanent residence in a foreign country within 5 years); *Meeker & Co.* v. *Lehigh Valley Railroad Co.,* 236 U.S. 412, 430 (1915) (upheld Congressional statute which made the findings of the Interstate Commerce Commission *prima facie* evidence of the facts found); *Hawkins* v. *Bleakly,* 243 U.S. 210, 214 (1917) (upheld state workmen's compensation statute which presumed negligence upon the part of an employer from proof of injury to the employee and proof of the employer's non-participation in the program); *Bandini Petroleum Co.* v. *Superior Court,* 284 U.S. 8, 18-19 (1931) (upheld state statute which provided "'The blowing, release or escape of natural gas into the air shall be prima facie evidence of unreasonable waste'" [*Id.* at 11 n. 1]);

Atlantic Coast Line R. Co. v. *Ford,* 287 U.S. 502 (1933) (upheld state statute's presumption that a railroad was negligent in a grade crossing accident upon proof of failure to give required warning signals); *Sanford* v. *Rockefeller,* 35 NY 2d 547 (1974), *app. dism. sub nom. Sanford* v. *Carey,* —— U.S. ——, 43 LW 3613 (5/19/75) (upheld a presumption that an employee was on strike from report showing absence from work during a work-stoppage. *Watson* v. *Cronin,* 384 F. Supp. 652, 658-9 (D. Colo. 1974) (upheld denial of a press card to one previously convicted felon because of his criminal record on proof that such conviction was not an absolute bar); *Turner Elkhorn Mining Co.* v. *Brennan,* 385 F. Supp. 424 (3-judge Ct. E.D. Ky. 1974), *prob jur.* noted 6/9/75 *sub nom. Dunlop* v. *Turner Elkhorn Mining Co.* (#74-1302) and *Turner Elkhorn Mining Co.* v. *Dunlop* (#74-1316), 43 LW 3644 (6/10/75) (upheld three *rebuttable* presumptions, while invalidating an *irrebuttable* presumption* contained in the Coal Mine Health and Safety Act of 1969.

Western and Atlantic Railroad v. *Henderson,* 279 U.S. 639 (1929) is not to the contrary. Justice Butler, speaking for the Court, invalidated a Georgia statute on the ground that a flat presumption of liability against the Railroad not only shifted the burdens of proof and of going forward, but was itself ". . . evidence to be weighed against opposing testimony . . ." (279 U.S. at 644). The presumption, *qua* presumption, was not invalidated. It was the use of the presumption as evidence which was found to be arbitrary. See *Atlantic Coast Line Railroad Co.* v. *Ford,* 287 U.S. 501, 508 (1933). But see *Breeden* v. *Weinberger,* 493 F. 2d 1002, 1005-7 (4th Cir. 1974) in which the use of a presumption as evidence was upheld.

---

* Probable jurisdiction was granted for this Court to review both the irrebuttable presumption and the rebuttable ones. 43 L.W. 3644 (6/10/75).

In reiterating the well-established rule in favor of rebuttable presumptions, this Court has recognized the deference due the legislature in the sphere of evidentiary rules. Chief Justice Hughes stated the proposition in *Bandini Petroleum Co.* v. *Superior Court, supra,* 284 U.S. 8, 18-19:

> ". . . The State, in the exercise of its general power to prescribe rules of evidence, may provide that proof of a particular fact, or of several facts taken collectively, shall be *prima facie* evidence of another fact when there is some rational connection between the fact proved and the ultimate fact presumed."

The choice of rules of evidence to determine disputes is ordinarily left to the Legislature

> ". . . *a right to have one's controversies determined by existing rules of evidence is not a vested right.* These rules pertain to the remedies which the State provides for its citizens and generally in legal contemplation they neither enter into and constitute a part of any contract, nor can be regarded as being of the essence of any right which a party may seek to enforce. Like other rules affecting the remedy, they must therefore at all times be subject to modification and control by the legislature; . . ." (Cooley, A TREATISE ON THE CONSTITUTIONAL LIMITATIONS, eighth ed., 1927 [Carrington, ed.] Vol. II at p. 766).

The Legislature which has the right to change the rules of evidence in a common law trial certainly has the same right in an administrative proceeding determining eligibility for a benefit created by that Legislature.

B. There is a Rational Relationship Between a Voluntary Termination Followed by an Application for Public Assistance Benefits and a Presumption that the Applicant Quit His Job for the Purpose of Obtaining Assistance.

The rational connection the legislature made between the facts proven and the fact presumed is plain from the language of the section and from common human experience. If a person voluntarily terminates his employment and contemporaneously applies for public support it is reasonable to presume that he intended to apply for assistance when he quit his job. The connection is partially temporal. Since both significant actions are taken in a relatively short period of time, it is reasonable to presume that the applicant intended to take the second action when he made the first move, unless he produces evidence which would disconnect the two.

This was also the rationale for the presumption upheld in *Sanford* v. *Rockefeller,* 35 NY 2d 547 (1974), *app. dism.* —— U.S. ——, 43 LW 3613 (5/19/75)—that proof of absence on the day of a strike justifies the presumption that the employee was absent for the purpose of participating in the work stoppage, unless he produces evidence to the contrary.

A temporal relationship also provides the rationale for presuming a decedent's motive in transferring an asset within 3 years of death was in contemplation of his death, in the absence of proof to the contrary. 26 U.S.C. § 2035. See *Bintliff* v. *United States,* 462 F 2d 403 (5th Cir. 1972). Compare a similar irrebutable presumption invalidated in *Heiner* v. *Donnan,* 285 U.S. 312 (1932).

The length of time between termination and application is itself a factor to be weighed by the agency in determining whether a person terminated his employment to receive assistance (Dft. Ex. A, A. 454). The time lapses between the termination of employment and application for assist-

ance in this case are very short. Plaintiff Lee waited the longest—15 days (Compl't, A. 78, see *ante* at p. 11). Joseph Beverly received his last pay on Friday, and applied for public assistance the following Tuesday (Transcr. Dft. Ex. E, A. 467, Pl. aff., A. 52). If a person is impoverished enough on Tuesday to be unable to support himself and to seek public funds it is not unreasonable to require that person to prove what he had in mind before the weekend when he quit his job and deprived himself of income. That is all that § 131(11) does.

The other connection between the facts proven and the fact presumed is the connection of necessity. A person needs income to subsist. If he voluntarily gives up his basic source of income, his job, and subsequently seeks another source of income, payments from the public treasury, it is reasonable to presume that he had that latter source of income in mind when he gave up the former, unless he produces evidence to the contrary. It is not necessary that all people in that category intended to apply for public assistance because it is a *rebuttable* presumption and, if inappropriate in a particular case, the facts to rebut it would always be in the possession of the applicant.

Thus, the presumption is rational for a third reason. The duty to produce the evidence required to overcome it does not place an onerous burden on the applicant who always knows why he terminated his employment, who bears the burden of proving each element of eligibility (18 NYCRR §§ 351.1(b)(2), 370.4(a), (b), *post* at pp. 1a, 6a-7a) and who is required to produce information regarding employment (18 NYCRR §§ 351.1(b)(2)(ii)(f), 370.4(b), *post* at pp. 1a-2a, 7a). There is no special requirement as to the character of the evidence necessary to overcome the presumption. By contrast, it would be virtually impossible for the local Department of Social Services to prove the purpose behind the applicant's terminating his employment.

The strict standard to which statutory classifications are held when they are called irrebuttable presumptions has caused this Court concern lest an extension (*Weinberger* v. *Salfi*, —— U.S. ——, 45 L. Ed. 2d 522, 543 [1975]):

> ". . . would turn the doctrine of those cases into a virtual engine of destruction for countless legislative judgments which have heretofore been thought wholly consistent with the Fifth and Fourteenth Amendments . . ."

How much worse the dilemma of legislatures would be if the holding below were affirmed and rebuttable presumptions were held to the same standard. If an eligibility criterion did not universally fulfill the purposes of the statute, but the statute gave the applicant the opportunity to show that that criterion was inappropriate in his case, it still would not be upheld. Then the legislature would have lost control over determinations of eligibility for government benefits. It would be left to administrators and Courts to determine who was eligible on an *ad hoc* basis. Such a chaotic result, itself, could cause denials of due process and equal protection far more serious than that threatened here.

C. By Permitting Rebuttal, This Statute Avoids the Defects of a Conclusive Presumption

The appropriate rule for assessing the validity of the presumption contained in NYSSL § 131(11) is whether it is "entirely arbitrary" *Bandini Petroleum Co.* v. *Superior Court*, 284 U.S. 8, 19 (1932). While the Court below paid lip service to the *Turnipseed* (219 U.S. at 35, 43)—*Bandini* (284 U.S. 8. 19) rule (Op. A. 568), it actually held the statute to the far stricter standard sometimes applied to irrebuttable or conclusive presumptions, citing *United States Department of Agriculture* v. *Murry*, 413 U.S. 508 (1973); *Vlandis* v. *Kline*, 412 U.S. 441 (1973).

In *Vlandis,* 412 U.S. 441 at 453, this Court held that "a permanent irrebuttable presumption of nonresidence" (*Id.* at 453) against a state college student seeking a lower rate of tuition had to be "necessarily or universally true in fact." Yet this Court just as clearly said the defect would be cured by "allow[ing] such an individual the opportunity to present evidence showing that he is a bona fide resident . . ." *Id.*

United States Dept. of Agriculture v. *Murry,* 413 U.S. 508 (1973) is to the same effect. The statute at issue rendered the appellees ineligible for food stamps because it contained an irrebuttable conclusion that a household was not needy if one person over 18 is claimed as a dependent for Federal income tax purposes by a person not a member of the household. Although the statute created an irrebuttable presumption, Justice Douglas measured it only by a standard of rationality (413 U.S. 508 at 514); but found it wanting. The critical flaw in the statute was that it deprived appellees of due process of law because the determination was made (143 U.S. 508, 513):

> ". . . without hearing, without witnesses, without findings of fact . . ."

This statute is by that token in sharp contrast to the food-stamp-eligibility provision.

In *Cleveland Board of Education* v. *LaFleur,* 414 U.S. 632 (1974), this Court reiterated that it was the conclusiveness of the regulations establishing mandatory leaves for pregnant teachers which rendered them invalid; ". . . the Due Process Clause required a more individualized determination." 414 U.S. 632 at 645.

In *Stanley* v. *Illinois,* 405 U.S. 645 (1972), this Court specifically approved a rebuttable presumption of unfitness of an unwed father, but rejected an irrebutable one (*id.* at 654-5):

> "It may be, as the State insists, that most unmarried fathers are unsuitable and neglectful parents. . . .

> But all unmarried fathers are not in this category. . . . Given the opportunity to make his case, Stanley may have been seen to be deserving of custody of his offspring." [marginal notes omitted].

In *Carrington* v. *Rash,* 380 U.S. 89 (1965), this Court struck down a Texas statute permanently prohibiting men who entered the Armed Services from another State from being eligible to vote in Texas while serving in the military. The evil was ". . . forbidding a soldier ever to controvert the presumption of non-residence." *Id.* at 96. A conclusive presumption that any gift made within two years of death was in contemplation of death was invalidated because it ". . . excludes consideration of every fact and circumstance tending to show the real motive of the donor." *Heiner* v. *Donnan,* 285 U.S. 312, 327 (1932). But a rebuttable presumption against a gift made within 3 years of death is valid (26 U.S.C. § 2035). See *e.g. Bintliff* v. *United States,* 462 F. 2d 403 (5th Cir. 1972).

New York allows the individual against whom the rebuttable presumption runs the opportunity to overcome it. Therefore, this Court's *conclusive*-presumption decisions, while providing an instructive contrast, do not govern the validity of this *rebuttable* presumption.

The only resemblance between a rebuttable presumption like that presented here and the irrebuttable ones invalidated by this Court is the semantic one. But, as Wigmore says, a conclusive presumption is not a presumption at all. J. Wigmore, EVIDENCE, 2492, at Vol. IX, p. 292 (3d ed. 1940).

D. There Are No Impediments to the Use of Presumptions in Application Proceedings Comparable to the Limits on the Imposition of a Presumption Against a Criminal Defendant

This Court has invalidated rebuttable presumptions only in criminal cases. *Leary* v. *United States,* 395 U.S. 6 (1969) (knowledge of illegal importation of marijuana presumed from its possession); *United States* v. *Romano,* 382 U.S.

136 (1965) (illegal production of liquor presumed from presence at the site of an illegal still); *Tot* v. *United States,* 319 U.S. 463 (1943) (presumption that a firearm was received in interstate or foreign commerce after the effective date of the statute from the fact that a defendant who had formerly been convicted of a crime of violence had it in his possession).

A presumption which shifts the burden of proof to an accused has an impact on rights of a criminal defendant which are specially protected by the Constitution in the Fourth, Fifth, Sixth and Fourteenth Amendments which has no analogue in Civil procedures. Last term this Court again emphasized the strictures upon the prosecution to prove every element of guilt beyond a reasonable doubt in holding that Maine could not require a homicide defendant to prove that he acted in the heat of passion. *Mullaney* v. *Wilbur,* —— U.S. ——, 44 L. ed. 2d 508 (1975). Also see *In re Winship,* 397 U.S. 358, 361-5 (1970), in which this standard was required to be used in juvenile proceedings which could result in loss of liberty for extended periods of time. The unique protections afforded a criminal accused are in marked contrast to administrative procedures governing the delivery of a government created benefit. The presumption at issue does not even shift the burden of proof (see Point IIB, *post* at pp. 51-2).

E. The Decision Below Was Unjustified by any Precedent

Two District Courts have invalidated rebuttable presumptions in civil cases. *Owens* v. *Roberts,* 377 F. Supp. 45 M.D. Fla. 1974); *De Kalb Real Estate Board* v. *Chairman and Board of Commissioners,* 372 F. Supp. 748 (N.D. Ga. 1973).

In *Owens,* two presumptions were at issue, one rebuttable and one irrebuttable. Both were invalidated. The irrebuttable presumption was contained in Division of Family Services, Reg., Ch. V § II (377 F. Supp. 46 at 48, n. 3) which provided that a fraudulent transfer

of assets is presumed from the transfer of an asset worth at least $600 for less than its value. The injunction of that irrebuttable presumption does not support the decision below. But the Court went further and enjoined the statutory rebuttable presumption of ineligibility for public assistance from the fact that a person transferred an asset within two years prior to, or during, receipt of assistance. (Fla. Stat. § 409.185[1][b], 377 F. Supp. 46 at 48, n. 2). In the Court's discussion it substituted its personal policies and perceptions of a "typical honest welfare recipient" (*Id.* at 53) for that of the Legislature, just as the Court below did.

The Florida Court also had a ground, other than unconstitutionality, for invalidating the rebuttable presumption which is not present here—non-compliance with the Social Security Act. 377 F. Supp. 46 at 54-5.

In that case, aged, blind and disabled recipients were found to be ineligible for any assistance for two years. Here an able bodied person would be ineligible for only 75 days and an applicant for AFDC for only 30 days. That is a significant distinction. In *Vlandis* v. *Kline,* 412 U.S. 441, 450-3 (1973), this Court emphasized the importance of the duration of the disability as a factor in assessing the rationality of a rule of evidence. It struck down a *permanent* rebuttable presumption of non-residence but approved a conclusive presumption of non-residence for one year. Also see *Starns* v. *Malkerson,* 326 F. Supp. 234 (3-judge Ct. D. Minn. 1970), affd. 401 U.S. 985 (1971).

In *DeKalb Real Estate Board* v. *Chairman and Board of Commissioners,* 372 F. Supp. 748 (N.D. Ga. 1973), the District Court declared a County anti-"blockbusting" ordinance unconstitutional before its effective date. The Court found the ordinance racially discriminatory in violation of the equal protection clause of the Fourteenth Amendment. It discriminated against black prospective home buyers by seeking " 'stabilization of neighborhoods' "

which has ". . . the ultimate effect of freezing in past discrimination" (372 F. Supp. 748 at 755), and it discriminated against black real estate agents because its purpose was to prevent panic selling by white families by banning the display of a "For Sale" sign with an agent's name for fear that an indication of black agents ". . . who predominantly sell only to black families" (317 F. Supp. at 755) would create such a panic. Several specific sections of the ordinance were also declared invalid for overbreadth (377 F. Supp. 748 at 755-6) and for an irrational classification which discriminated in favor of owner-sellers and against real estate agents in violation of the equal protection clause of the Fourteenth Amendment (377 F. Supp. 748 at 754).

The Georgia Court also found a deprivation of due process because of a rebuttable presumption. The presumption was used in a proceeding in the Recorder's Court in which the agent was called an "accused", "stood trial for violation" and in which he faced "conviction" (DeKalb County Ordinance, § V, 377 F. Supp. at 758-9). The penalty upon "conviction" could be suspension or revocation of his license to do business (*id.* at 758). The rebuttable presumption at issue there was that a real estate agent had violated an anti-blockbusting ordinance from the existence of a "For Sale" sign with his name located on residential real estate. The Court held that there was no rational connection between the sign and "blockbusting". It declared that section invalid, relying on criminal cases (372 F. Supp. 748, 753-4), possibly because of the quasi-criminal nature of the enforcement procedures. Because the whole ordinance was invalidated as racially discriminatory and the prohibition against placing signs was invalidated as overbroad and as denying equal protection, the significance of the due process holding is slight. The evil against which the Court was ruling was not the presumption but the ultimate finding—that the agent could lose his license for putting up a sign.

F. The Court Below Failed to Assess Rationality of the Rebuttable Presumption

Whether or not it was right in invalidating the rebuttable presumption in *DeKalb Real Estate Bd., supra,* 372 F. Supp. 748, the Florida Court asked the right question and answered it responsively—is there a rational connection between the facts proven and the fact presumed or is the presumption purely arbitrary (see Point IA *ante* at pp. 25-8). The Court below did not really ask that question and it certainly did not answer it. Its inapposite response was that most people do not leave their employment to obtain public assistance (op. A. 569-73). Citing some statistics and a smattering of reports, it concluded (A. 570):

> "We do not think it can be stated as a general rule, as the statutory presumption would have it, that poor people do not have the same desire to work and to obtain the fruits of work as the non-poor."

If that straw man were the statutory presumption at issue the materials cited would be relevant.

But the statutory presumption here is not invoked by proof of poverty. In fact it affects only a very small proportion of recipients of public assistance and an infinitesimally small proportion of poor people. Since its overriding purpose is to deter people from quitting their jobs without being able to support themselves in the near future, it is intended to affect as small a number as possible. If it works well there will be few people who will terminate employment without the ability to support themselves in the short run and, of those, fewer still who will not be able to overcome the presumption.

Furthermore, the Court below suggested that the statute was designed to change people's attitudes toward work (op. A. 569-73). But that is plainly not involved. The statute seeks to prevent objective behavior—i.e., quitting

a job without any means for self-support in the near future. It therefore would deter people with a positive attitude toward work, as well as those with a negative or indifferent attitude, and no provision of the statute rests on any perjorative assumptions about the people who might be affected.

It is for this reason that the materials submitted by the plaintiffs did not advance their argument nor support the decision below.

The excerpt from WORK IN AMERICA submitted by plaintiffs to the Court below (Exh. A, A. 327-39) and cited in its opinion (A. 570) is a philosophical discourse on the "functions of work" largely in psychological terms. The purpose of its introduction is to suggest that generalizations about poor people's unwillingness to work are not justified. It forms no basis for invalidating a specific state statute which is not in any sense based on such generalized opinions.

Low Income Life Styles by Lola M. Irelan (U.S. Dept. HEW, 1968, Pl. Ex. F, A. 393-407) also consists of generalized remarks about the difficulties of poverty and the psychological attitudes of the poor which have only the most tangential relationship to section 131 (11).

The emphasis on psychological attitudes in those essays is in contrast to the findings of the Bureau of Labor Statistics in *Work Attitudes of Disadvantaged Black Men* (1972) (Pl. Ex. H, A. 422-33) that there was relatively little difference in attitude expressed by persons who had participated in the labor force in different degrees. People who worked steadily seemed to have the same attitudes as non-participants.

The Bureau of National Affairs' 1970 survey, *Turnover and Job Satisfaction* (Pl. Ex. G, pp. 408-21) reports executives' opinions about prevention of turnover and promotion of job satisfaction; it does not address the situation where an employee quits without being able to support himself for even a short period of time, which is the subject of this action.

The excerpts from W.G. Bowen and T. A. Finnegan, *The Economics of Labor Force Participation* [Princeton U. Press 1969] pl. Ex. A, A. 383-92) examine the impact of "other income", which category includes public assistance payments, on the study group of "prime age males". The relevant findings were but a "hunch" (*id.* at A. 386-7):

> "It hardly seems likely that men between 25 and 54 years of age *who were able to earn a good income* by participating in the labor market would choose not to participate because they received somewhere between $1,000 and $3,000 per annum from other sources —it takes more money than this to qualify as a member of the idle rich! It seems more likely that most of the men receiving $1,000-$3,000 of other income and not participating in the labor force are men who would have had difficulty finding employment, and that if they had found jobs they would not have commanded large salaries. In short, our hunch is that the possession of small amounts of other income serves mainly to permit some prime-age males who would otherwise have had a tenuous place in the labor market to stay out altogether."

That "hunch" is not entitled to the same weight as fact-finding by the legislature. See *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 809 (1969).

However, the findings do support the utility of limiting public assistance benefits to persons who do not voluntarily terminate their employment for the purpose of obtaining such benefits because there are people who do not "command . . . large salaries". The same study found that in the early 60's high expenditures on public assistance per capita was not correlated with a lower participation

in the labor force among prime age males (Pl. Ex. E, A. 391-2). The authors do not claim that this statistic has any predictive value for persons applying for public assistance shortly after voluntarily terminating employment.

The short excerpt from the foreword of Leonard Goodwin, *Do the Poor Want to Work? A Social-Psychological Study of Work Orientations* (Brookings Institute, 1972) (Pl. Ex. I, A. 434-8) expresses skepticism about the ability to find jobs for and train "welfare mothers". In such an economic climate, it is all the more important for those who have jobs to hold on to them until they find new employment.

Thus these non-legal materials submitted by appellees and relied on by the District Court do not support the finding that the rebuttable presumption was arbitrary. None of them deals with the facts giving rise to the presumption. In any event, they furnish no support for overruling the Legislature's finding that such a provision would advance state policy.

Indeed, appellees' materials address themselves more to the broader purposes of the work programs which have been enacted by Congress and various state legislatures including New York's. Yet this Court specifically upheld New York's work rules against an attack that they were pre-empted by Congress's WIN programs. *New York State Department of Social Services* v. *Dublino,* 413 U.S. 405 (1973). The broad purposes of both federal and state statutes were held to be within the legitimate purview of legislation in contrast to the holding below. This Court held (413 U.S. 405 at 413) that invalidation of New York's program:

> ". . . could impair the capacity of the state government to deal effectively with the critical problem of mounting welfare costs and the increasing financial dependency of many of its citizens. New York has a legitimate interest in encouraging those of its citizens who can work to do so, and thus contribute to the societal well-being in addition to their personal and family support. To the extent that the Work Rules embody New York's attempt to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many state and local governments, this Court should not lightly intetrfere. The problems confronting our society in these areas are severe, and state governments, in cooperation with the Federal Government, must be allowed considerable latitude in attempting their resolution".

This Court has already approved the validity of the legislative purpose of New York's work rules. Section 131(11) is a necessary part of that program.

G. The Enactment of This Presumption Was a Proper Exercise of Legislative Power

This Court recognized the primacy of legislative policy with regard to promoting employment and limiting State expenditures to those "genuinely incapacitated and most in need" in *New York State Department of Social Services* v. *Dublino,* 413 U.S. 405, 413. Generally, in the field of welfare, this Court has wisely stayed its hand. In *Dandridge* v. *Williams,* 397 U.S. 471, 487, the Court declared (1970):

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court."

Also see *Jefferson* v. *Hackney,* 405 U.S. 535 (1972). Cf. *San Antonio School District* v. *Rodriguez,* 411 U.S. 1, 33-4 (1973), which relied on the same principle in the context of State educational finance policy.

The Court below rejected these decisions as irrelevant because they dealt with the right to equal protection of the laws (Op. A. 573). The District Court is unique in its view that there is a clear line between due process and equal protection analysis. This Court has confronted them as overlapping and difficult to distinguish. *Weinberger* v. *Salfi,* —— U.S. ——, 45 L. ed. 2d 522 (1975); *Mobile, J. & K.C.R. Co.* v. *Turnipseed,* 219 U.S. 35, 43 (1910); *Bandini Petroleum Co.* v. *Superior Court,* 284 U.S . 8, 18-19 (1931) *Jiminez* v. *Weinberger,* 417 U.S. 628, 638 (1974) (Rehnquist, J. *dissenting*); *Cleveland Board of Education* v. *La Fleur,* 414 U.S. 632, 652 (1974) (Powell, J. *concurring*).

In reversing the District Court's holding that the duration-of-relationship provisions of the Social Security Act violated the *due process clause* of the Fourteenth Amendment, this Court held that it created a rational classification in conformity with the *equal protection clause. Weinberger* v. *Salfi, supra.* The Court emphasized the ability of appellants to present evidence ". . . that they meet specified requirements" as support for the use of equal protection analysis (45 L. ed. 2d 522 at 543). Appellees here also can present evidence. They even can rebut the presumption. Therefore, the equal protection standard of rationality could be used here, as well.

The Constitution requires deference to legislative findings whether an attack on a statute is based on the due process or equal protection clauses. In *Richardson* v. *Belcher,* 404 U.S. 78, 84 (1971), this Court deferred to Congress' power to provide that Workmen's Compensation benefits be offset against a disability claim under the Social Security Act and upheld the provision as not violative of the claimant's right to due process of law.

The eloquence of Mr. Justice Black in upholding a Kansas criminal statute regulating "debt adjusting" against a claim of denial of due process is still persuasive, despite its familiarity. *Ferguson* v. *Skrupa,* 372 U.S. 726, 729-30 (1963):

> ". . . Under the system of government created by our Constitution, it is up to legislatures, not courts, to decide on the wisdom and utility of legislation. There was a time when the Due Process Clause was used by this Court to strike down laws which were thought unreasonable, that is, unwise or incompatible with some particular economic or social philosophy. . . . This intrusion by the judiciary into the realm of legislative value judgments was strongly objected to at the time, particularly by Mr. Justice Holmes and Mr. Justice Brandeis.
>
> • • •
>
> "The doctrine that prevailed in *Lochner, Coppage, Adkins, Burns,* and like cases—that due process authorizes courts to hold laws unconstitutional when they believe the legislature has acted unwisely—has long since been discarded. We have returned to the original constitutional proposition that courts do not substitute their social and economic beliefs for the judgment of legislative bodies, who are elected to pass laws . . ."

Judge Frankel exercised similar judicial restraint in refusing to enjoin the enforcement of state statutes obligating recipients to repay the Welfare Department for past assistance. *Snell* v. *Wyman,* 281 F. Supp. 853, 862, 863 (S.D.N.Y. 1968), affd., 393 U.S. 323 (1969). The due process rationale of *Snell* was specifically approved by this Court in *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970).

POINT II

The simple procedures for rebutting the presumption in the local social services office and at the State fair hearing guarantee due process of law especially because the facts which rebut the presumption are wholly within the applicant's knowledge and control.

Plaintiffs and the Court below deemed the presumptions contained in NYSSL § 131(11) not only unsupported by reason—a conclusion disproved in Point I, *ante*—but burdensome to rebut, particularly because the opportunity to rebut is allegedly delayed. That view of the presumption misconstrues the state regulatory scheme. For the presumption is easily rebuttable, where appropriate, at an early stage and repeatedly thereafter, by evidence within the applicant's control; and the presumption creates no special burden of proof, for even without it the applicant has the burden of establishing his eligibility. To these considerations we now turn, after a brief summary of the administrative procedure of which the presumption is a part.

The presumption contained in NYSSL § 131(11) first arises when a person applies for public assistance within 30 (for AFDC) or 75 (for HR) days after quitting his job. The applicant is required to (18 NYCRR § 351.1(b)(2), *post* at p. 1a):

> "(i) provide accurate, complete and current information on his needs and resources as well as the whereabouts and circumstances of responsible relatives;
>
> "(ii) furnish evidence to provide verification of those factors which affect eligibility and the amount of entitlement . . ."

If, like plaintiffs, he is an applicant for Home Relief (NYSSL § 158[a] [*ante* at p. 6]) and capable of self-

support,* he has the responsibility (18 NYCRR § 370.4(a), *post* at p. 7a):

> ". . . to provide verified information concerning his previous maintenance, loss of income and the extent and duration of current need."

It is to be expected that a recently employed applicant for public assistance, particularly for HR, will bring to the local agency evidence of that recent employment, of the income received and of the termination of that employment. If the applicant is applying within the periods specified by 18 NYCRR § 385.7, he will be asked why he terminated his previous employment. If he did not intend to apply for public assistance at the time, his explanation, corroborated by the data proving facts related to his income, would be enough to overcome the presumption. See 18 NYCRR §§ 351.5-351.6.

State-issued guidelines for ascertaining whether termination of employment was for the purpose of qualifying for public assistance refer local agency staff to 18 NYCRR § 385.6(c)** (dft. aff., A 447, dft. Ex. A, 454-5) for examples of reasons for quitting jobs for purposes other than qualifying for public assistance (dft. aff., A. 447-8; Ex. A, A. 454). Those reasons include (18 NYCRR § 385.6 [c] [dft. aff. 447-8]):

> ". . . the salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation or hours or conditions of work offered are sub-

---

* Disabled persons were eligible for Aid to the Aged Blind and Disabled (AABD). See former 42 U.S.C.A. § 1381 *et seq.*, former NYSSL Titles 6-9, §§ 207 *et seq.* Since January 1, 1974, they have been eligible for Supplemental Security Income 42 U.S.C.A. § 1381 *et seq.*, NYSSL §§ 207-12.

** That section deals with good cause for refusal to accept employment.

stantially less favorable to the applicant or recipient than those prevailing for similar work in locality;

"a strike, lock-out or other industrial controversy was in progress at the place in which employment was offered;

• • •

"the job would have been hazardous to the applicant's or recipient's life or health, or there was an absence, if appropriate, of workmen's compensation;

"the place of employment was an unreasonable distance from the applicant's or recipient's home;

"transportation by public carrier or by private means between the applicant's or recipient's home and the place of employment was unavailable;

"child care plans were temporarily disrupted making it impossible for the applicant/recipient to report as required; or

"temporary and verified illness incapacitated the client." (enumeration omitted).

Appellant's informational letter further emphasized (dft. Ex. A, A. 445):

> "Local districts, of course, should not consider this list as exhausting the possibilities under which a voluntary or provoked discharge is not subject to sanction, but should continue to exercise reasonable discretion, considering such factors as the lapse of time between termination of employment and application for assistance, attempt to resolve the differences with the employer which led to termination, ability to verify reasons alleged for termination, etc."

Local agencies also issue guidelines for enforcing the presumption. The New York City Human Resources Administration which administers New York's largest Social Services District has such a guideline, issued in January,

1972 (IM #14/72, dft. Ex. B, A. 456-8), giving examples of reasons for terminating employment which, if proven, would demonstrate a purpose other than qualifying for assistance (A. 457-8):

> "a. Harassment by employee's supervisor;
>
> "b. Discrimination because of race, sex, age or religion;
>
> "c. Expectation of another job that did not materialize;
>
> "d. Conditions on the job or on the way to the job that posed a danger or hazard to the employee;
>
> "e. Family moved to a location which made the job an unreasonable distance away;
>
> "f. Child care plans were disrupted;
>
> "g. Verified illness forced resignation;
>
> "h. Strike or industrial controversy caused resignation."

The local social services agency still has the duty to determine whether, in fact, the applicant terminated his employment for the purpose of obtaining public assistance under NYSSL § 131(11). This determination would have to be made even if the District Court's opinion were affirmed, since it was only the clause establishing the presumption which was invalidated, not that establishing the period of ineligibility for persons who voluntarily terminated their employment for the purpose of obtaining public support.

Aside from NYSSL § 131(11), the local agency has the duty to determine in the case of each applicant for HR (18 NYCRR § 370.4(b), *post* at p. 7a):

> ". . . the source and amount of previous income or maintenance; the reason and date of its discontinu-

ance; presumptive eligibility for benefits relating to loss of income; and employability and availability for employment."

For each applicant, the agency has to explore, verify and evaluate their resources, including income from employment. 18 NYCRR § 351.4(e) (*post* at p. 3a).

Eligibility is determined ". . . as soon as the facts to support it have been established." (18 NYCRR § 351.8(b), *post* at p. 3a). The decision must be subjected to "supervisory review." 18 NYCRR § 351.8(a) (*post* at p. 4a). Except upon the applicant's request or in the face of unusual circumstances, the decision on initial eligibility is made within 30 days. 18 NYCRR § 351.8(b), (*post* at p. 3a). If immediate need exists before eligibility has been established, "an emergency or predetermination grant of assistance shall be made . . ." 18 NYCRR § 351.8(c)(4) (*post* at p. 6a).

Even if assistance is denied, the applicant can reapply on basis of new evidence. If assistance is denied, the applicant has a right to a state fair hearing and to be informed of that right. 18 NYCRR §§ 358.4-358.5. If a fair hearing is requested, he is notified when his hearing is scheduled. 18 NYCRR § 359.2 and at the hearing, he has, among others, the right (18 NYCRR § 358.16[c]):

> ". . . to be represented by counsel, or other representative, to testify, to produce witnesses to testify, to offer documentary evidence, to cross-examine opposing witnesses, to offer evidence in rebuttal and to examine any documentary evidence offered by the other party."

A decision after the State hearing must be rendered within 90 days of receipt of the request for one. 18 NYCRR § 358.18. See *Nelson* v. *Sugarman*, 361 F. Supp. 1132 (S.D.N.Y. 1971).* However in June, the New York

* At the time of the initial decision, HEW rules required a decision in 60 days.

Court of Appeals required appellant to formulate a plan for expedited hearings after denial of emergency assistance (*Jones* v. *Berman*, 37 N Y 2d 42, 55-6 [1975]) which might be available to applicants denied assistance under NYSSL § 131(11) who sought emergency relief. Compare decision below (Op., ns. 5, 6, A. 577-8).

The state fair hearing, itself, can be reviewed in an Article 78 (New York Civil Practice Law and Rules [CPLR]) procedure. See *Sanford* v. *Rockefeller*, 35 N Y 2d 547, 562-3 (1975), *app. dism. sub nom. Sanford* v. *Carey*, —— U.S. ——, 43 LW 3613 (5/19/75).

A. The Flexible Procedures at the Local Welfare Office Which Can be Reviewed at a State Fair Hearing Protect an Applicant's Right to Due Process of Law.

While the District Court held that it did not reach the question whether the applicants were given an adequate opportunity to rebut the § 131(11) presumption (Op. A. 567), the writer of the opinion suggested in the margin that the presumption could only be rebutted at a State fair hearing and that those State fair hearings were not scheduled promptly enough to afford appellees their right to due process of law (Op. ns. 5-6, A. 577-5).

But as we have seen, appellant has the opportunity, indeed the obligation, to present rebutting evidence to the local agency. 18 NYCRR §§ 351.1(a), (b); 351.2(a)-(e)(1); 351.3-351.6(b); 351.8; 370.4(a), (b) (*post* at pp. 1a-7a) and the decision on eligibility is reviewed by supervisory personnel. 18 NYCRR § 351.8(a) (*post* at p. 5a).

These procedures are similar to those employed by the State Department of Labor before suspending unemployeement insurance benefits. The recipient is present at an interview and is given an opportunity to present favorable facts. Those procedures were held to be valid in *Torres* v. *New York State Department of Labor*, 333 F. Supp.

341 (S.D.N.Y. 1971), affd. 405 U.S. 949 (1972).* The procedures at issue in the present case are even less susceptible to attack than those in *Torres,* because the issue to be determined by the Agency is initial eligibility, rather than termination of benefits previously granted. Proceedings to deprive persons of benefits currently enjoyed have sometimes been subjected to special scrutiny. E.g. *Goss* v. *Lopez,* —— U.S. ——, 42 L. Ed. 2d 725 (1975); *Cleveland Board of Education* v. *La Fleur,* 414 U.S. 632; *Perry* v. *Sinderman,* 408 U.S. 593 (1972); *Board of Regents* v. *Roth,* 408 U.S. 564 (1972); *Bell* v. *Burson,* 402 U.S. 335 (1971); *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

Even in cases in which a previously-enjoyed benefit is terminated, a formal pre-termination hearing is not always required. In *Arnett* v. *Kennedy,* 416 U.S. 202 (1974), this Court held that a federal employee could be discharged before he had a trial-type pre-termination hearing. Also see *Torres* v. *New York State Department of Labor,* 333 F. Supp. 341 (S.D.N.Y. 1971), affd. 405 U.S. 949 (1972).

Similarly, the New York Court of Appeals upheld procedures under the "Taylor Law" (Public Employees' Fair Employment Act [N.Y. Civil Service L. Art. 14 § 210]) which placed thousands of New York City employees on nontenure probationary status and fined them two days' pay for each day they had been absent during a strike, before they had been afforded a hearing to determine whether they had participated in the work stoppage. *Sanford* v. *Rockefeller,* 35 N Y 2d 547 (1974), *app. dism. sub nom. Sanford* v. *Carey,* —— U.S. ——, 43 LW 3613 (5/19/75).

Since hearings are not always required, before termination or suspension of benefits, Judge Oakes's implication that a trial-type hearing was required before an *application* for benefits could be denied is certainly unjustified.

* The Court reiterated its previous decision in *Torres* v. *New York State Department of Labor,* 321 F. Supp. 432 (S.D.N.Y. 1971), vacated and remanded 402 U.S. 968 (1971).

It would mean that the mere application for assistance would warrant the granting of it pending the outcome of a fair hearing. This squandering of precious resources is not required by the Constitution.

Since before this suit was brought, appellant had been subject to a permanent injunction governing review of denials of assistance. The Department's performance was being monitored by the United States District Court for the Southern District of New York (*Motley,* D.J.). *Nelson* v. *Sugarman.* See 361 F. Supp. 1132 (S.D.N.Y. 1971) (permanent injunction issued 12/11/73). The injunction required that a fair hearing decision be rendered within 90 days of the request following the denial of an application for assistance. Also see 18 NYCRR § 351.8(a). Because all plaintiffs were members of the class granted the injunction in *Nelson, supra,* the District Court in this case was bound by Judge Motley's determination. Plaintiffs could not be afforded any special consideration in scheduling fair hearings. All other applicants who had been denied assistance for reasons other than ineligibility under NYSSL § 131(11) also claim to be destitute. However, the Court of Appeals' decision in *Jones* v. *Berman,* 37 N Y 2d 42, 55-6 (1975), will provide expedited procedures for reviewing denials of applications for emergency assistance. Any applicant who claims to be in emergent need will be able to have his situation reviewed promptly.

B. The Presumption does not Impose an Onerous Burden of Proof on the Applicant who has the Burden of Proving Eligibilty for Assistance, Even Absent the Presumption.

The applicant for public assistance has the obligation to produce proof of each element of elegibility (*ante* at pp. 44-9). In fact, the presumption contained in NYSSL § 131(11) merely clarifies the duty of the applicant to introduce evidence of his purpose in voluntarily terminating his employment (*post* at pp. 1a-4a, 6a-7a).

Even if the burden of proof is shifted by the use of an evidentiary presumption in a civil proceeding it may be upheld. *Bandini Petroleum Co.* v. *Superior Court,* 284 U.S. 8 (1931); *Lindsley* v. *Natural Carbonic Gas Co.,* 220 U.S. 61 (1911); *Mobile J. & K.C.R. Co.* v. *Turnipseed,* 219 U.S. 35 (1910); *Turner Elkhorn Mining Co.* v. *Brennan,* 385 F. Supp. 424 (3-judge Ct. E.D. Ky. 1974), *prob jur.* noted 6/9/75 *sub nom. Dunlop* v. *Turner Elkhorn Mining Co.* (#74-1302) and *Turner Elkhorn Mining Co.* v. *Dunlop* (#74-1316), 43 LW 3644 (6/10/75); *Sanford* v. *Rockefeller,* 35 N Y 2d 547 (1974), *app. dism. sub nom. Sanford* v. *Carey,* —— U.S. ——, 43 LW 3613 (5/19/75).

In criminal cases the shifting of the burden of proof to the defendant has led this Court to invalidate rebuttable presumptions. *Leary* v. *United States,* 395 U.S. 6 (1969); *United States* v. *Romano,* 382 U.S. 136 (1965); *Tot* v. *United States,* 319 U.S. 463 (1943). (See discussion Point ID *ante* at pp. 33-4). The possibility that a presumption will constitute a denial of due process of law is far greater in a criminal conviction than it is in a civil proceeding. A criminal defendant is presumed innocent and the prosecution has the burden of proving each element of the crime. A presumption in that case reverses the burden of proof and the burden of going forward. Accordingly, the standard of rationality which a presumption in a criminal trial must meet is far stricter than that in a civil case. This Court emphasized the special nature of a presumption used in criminal trials in *Leary, supra,* at 35 and at 55 (BLACK concurring) and in *Romano, supra,* at 144.

C. It is Reasonable to Require an Applicant for Assistance to Provide Relevant Evidence Which is Entirely Within his Possession.

The imposition of the presumption on applicants for assistance is particularly appropriate in this instance because the fact to be proved is peculiarly within the knowledge and control of the applicant. It is his intent that is

at issue. His oral statements will frequently be enough to overcome the presumption. Since the applicant has the burden of proving his eligibility, it was reasonable of the Legislature to require him to introduce evidence to prove that he did not intend to be supported by the public after he terminated his employment. Wigmore (*Evidence,* § 2486 at Vol. IX, p. 275 [3d ed. 1940]) states:

> "the burden of proving a fact is said to be put on the *party who presumably has peculiar means of knowledge* enabling him to prove its falsity if it is false. This principle has received frequent application in modern statutes making it an offense to pursue a certain occupation without a *State* license or forbidding a certain act unless in personal circumstances justifying an exception."

Also see *Campbell* v. *United States,* 365 U.S. 85, 96 (1961) (defendant has right to production of statements and reports of government witnesses); *United States* v. *N.Y.N.H. & H.R.R. Co.,* 355 U.S. 253, 256, n. 5 (1957) (carrier has the burden of proving the correctness of its bills); *G.E.J. Corp.* v. *Uranium Aire, Inc.,* 311 F. 2d 749, 751 (9th Cir. 1962) (to defend its option the defendant had the burden of proving the quality of its mines).

The District Court incorrectly rejected this reasoning, stating that it was a "question of policy" (op. A. 572) whether to employ the presumption. Having properly analyzed the issue, the District Court went on to overrule the Legislature's policy and enunciate its own. But the choice of policy whether or not to employ a presumption is the responsibility of the representative branch of government, not the Court.

POINT III

The class action order and injunction were expanded to enjoin provisions relating to AFDC applicants although no plaintiffs were applicants for AFDC and although the provisions involving AFDC applicants were significantly different from those affecting plaintiffs.

The District Court enjoined the provisions of NYSSL (§ 131(11) and 18 N.Y.C.R.R. § 385.7, both with regard to applicants for HR and AFDC (op., A. 569, 574; orders, A. 579-83), although no plaintiff was a recipient of AFDC. The record* before the Court below was silent as to the application of the law to AFDC recipients. There was no evidence that the presumption at issue had ever affected an AFDC recipient. Appellees' original designation of the class would have included only applicants for HR because it refers to a sanction period of 75 days (Compl't, A. 16).

The presumption is triggered in the case of an AFDC applicant only if he applies for assistance within 30 days of terminating his employment. For HR recipients it is 75 days. The Court did not discuss whether an application for assistance within 30, rather than 75, days was a rational basis for the presumption. 18 NYCRR § 385.7 (*ante* at p. 3).

Federal law also places an absolute sanction on applicants for AFDC-U, making the whole family ineligible for assistance for 30 days after the father's employment terminated, whether or not he quit or was fired and no matter what the reason for termination. 45 CFR § 233.100 (a)(3)(i), (ii). The holding of the District Court invalidated a presumption which, if not overcome, would render

---

* The only discussion of AFDC recipients before the District Court was contained in the memoranda submitted in support of the counter-orders.

an applicant ineligible for assistance for 30 days. But such an applicant would have the opportunity to overcome it. It is ironic that under unchallenged Federal law that same applicant is subject to an absolute sanction for 30 days with no opportunity for rebuttal.

In its decision, the District Court recognized that the class consisted of only HR applicants (A. 574); but then extended its relief to AFDC applicants, as well (A. 574; n. 7, A. 578; orders A. 579-83). Neither the named plaintiffs nor any other HR applicant has a justiciable interest in the presumption as it applies to AFDC recipients.

The Court below was limited in the scope of its order at least by Article III of the Constitution which restricts judicial power to "cases" or "controversies". Had the Constitution intended to allow the courts to make executive and administrative decisions it would not have so limited their power. But this limitation is a necessary concomitant of the separation of powers.

In *SCM Corporation* v. *Radio Corporation of America,* 407 F. 2d 166 (2d Cir. 1969), *cert. denied* 395 U. S. 943 (1969), the Court held that the defendant could not counterclaim on the basis of injury to its licensees. *Id.* at 170. In so holding it stated a rule whose analogue is applicable to this case as well:

> "Standing to sue was not given by Congress to any and every citizen who, motivated by public spirit or possibly some baser reason, would set himself up as a watchdog of business behavior. Congress properly bestowed the right to sue only on such persons as might be injured in their business or property *by reason* of anything forbidden in the antitrust laws." *Id.* at 171.

For plaintiffs to be afforded relief not in their own interest is contrary to the basic function of the judicial office of the Courts in this country. *Tileston* v. *Ullman,* 318

U. S. 44 (1943). It has frequently been held that parties cannot agree to bring a test case (*Poe* v. *Ullman*, 367 U. S. 497 [1961]), nor can they seek tc attack an entire statute where their rights have not been infringed by all of its provisions. *Electric Bond and Share Co.* v. *Securities and Exchange Commission*, 303 U. S. 419, 443 (1938).

The District Court here was not called on to adjudge the legal right of any applicant for AFDC. Instead it found what it thought to be a violation of a technical statutory requirement in the abstract and overreached to resolve a potential controversy not before it.

This is contrary to the teaching of *De Funis* v. *Odegaard*, 416 U. S. 312 (1974) and *Golden* v. *Zwickler*, 394 U. S. 103 (1969), in which fortuitous circumstances mooted plaintiffs' claims. Nonetheless, this Court held that they could not continue their suits raising very interesting constitutional questions. At the very least, a justiciable controversy must be one presented ". . . in the context of a specific live grievance". *Golden* v. *Zwickler, supra*, at 110.

This limitation on the judiciary is especially strict when the validity of a state statute is at stake, e.g., *Golden* v. *Zwickler, supra*. As this Court analyzed such a question (*Poe* v. *Ullman*, 367 U. S. 497, 503-504):

> "The various doctrines of 'standing,' 'ripeness,' and 'mootness,' which this Court has evolved with particular, though not exclusive, reference to such cases are but several manifestations—each having its own 'varied application'—of the primary conception that federal judicial power is to be exercised to strike down legislation, whether state or federal, only at the instance of one who is himself immediately harmed, or immediately threatened with harm, by the challenged action."

In *Liverpool, N.Y. & P.S.S. Co.* v. *Commissioners*, 113 U. S. 33, 39 (1885), this Court held that the judiciary does

not have the power to declare a state statute void:

> "except as it is called upon to adjudge the legal rights of litigants in actual controversies."

In *Muskrat* v. *United States*, 219 U. S. 346 (1911), this Court explained the delicate relations among the organs of government when the validity of a statute is brought before a court (*Id.* at 361):

> "The right to declare a law unconstitutional arises because of an act of Congress relied upon by one or the other of such parties in determining their rights is in conflict with the fundamental law. The exercise of this, the most important and delicate duty of this court, is not given to it as a body with revisory power over the action of Congress, but because the rights of the litigants in justiciable controversies require the court to choose between the fundamental law and a law purporting to be enacted within constitutional authority, but in fact beyond the power delegated to the legislative branch of the Government. This attempt to obtain a judicial declaration of the validity of the act of Congress is not presented in a 'case' or 'controversy', to which, under the Constitution of the United States, the judicial power alone extends."

Similarly, here the decision that provisions of the State statute relating to AFDC applicants are in violation of the Constitution is not presented in a "controversy" between plaintiffs and defendants.

CONCLUSION

For the foregoing reasons, the final judgment and order of the three-judge District Court should be reversed and summary judgment granted to appellant.

Dated: New York, New York, Sept. 3, 1975.

Respectfuly submitted,

LOUIS J. LEFKOWITZ
Attorney General of the State
of New York
Attorney for Appellants

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

AMY JUVILER
Assistant Attorney General
Of Counsel•

• The Attorney General gratefully acknowledges the assistance of Carole Schwartz, Summer Law Assistant, in the preparation of this appeal.

APPENDIX

NYCRR

Title 18 Regulations of the N.Y.S. Department of Social Services

PART 351

Investigation and Eligibility

Section 351.1 Investigation. (a) *Definition.* Investigation is a continuous process which is concerned with all aspects of eligibility for public assistance or care from the period of initial application to case closing. Investigation means the collection, verification, recording and evaluation of factual information on the basis of which a determination is made of eligibility and degree of need, or of ineligibility, for any form of public assistance or care.

(b) *Responsibility for furnishing information.* The social services official shall:

(1) provide applicants and recipients, and others who may inquire, with clear and detailed information concerning programs of public assistance, eligibility requirements therefor, methods of investigation and benefits available under such programs;

(2) inform each applicant and recipient, at the time of application and subsequently, of such person's initial and continuing responsibilities to:

(i) provide accurate, complete and current information on his needs and resources as well as the whereabouts and circumstances of responsible relatives;

(ii) furnish evidence to provide verification of those factors which affect eligibility and the amount of entitlement including:

(a) identity;

(b) residence;

(c) family composition;

(d) rent payment or cost of shelter;

(e) income from any source;

(f) savings or other resources; and

(g) lawful residence in the United States, if the recipient is an alien.

(iii) apply for and utilize any benefits or resources that will reduce or eliminate the need for public assistance or care; and

(iv) notify the district of any changes in his needs and resources.

• • • •

351.2 Aspects of investigation and eligibility. (a) *Identity.* The applicant or recipient shall furnish verification of his identity.

(b) *Residence and cost of shelter.* Place of residence and rent payment or other shelter costs of the applicant or recipient shall be verified.

(c) *Family composition.* For each member of the household for whom an application for assistance is made the following information shall be furnished: name; date and place of birth; relationship to other members of the household; social security number, veteran status; activity status; marital status if 16 years of age or over; if any person is pregnant, the anticipated date of delivery; and if the applicant is employed, the expenses incident to such employment. For all members of the household not applying for assistance, the name and relationship to those applying for assistance shall be furnished.

(d) *Need.* Consideration shall be given to individual and family requirements for all items of need and any changes in such requirement for need in accordance with department regulations.

(e) *Resources.* Resources include individual or family financial assets, income from employment, eligibility for or receipt of benefits, and the services and social resources available through family relationships and community programs. Resources shall be explored, verified, and evaluated as to their immediate and/or potential availability to remove or reduce the need for public assistance.

(1) *Financial resources.* Each financial asset or resource immediately or potentially available to the applicant or recipient shall be identified and shall be explored to determine its nature, amount, form and availability. Each such resource shall be evaluated and a decision reached in regard to its utilization. Such resources include but are not limited to: employability, earnings, work related benefits, pensions, health insurance, small business, real and personal property, securities, cash on hand, bank accounts, insurance, trust funds, estate settlements, servicemen's benefits, income in kind, contributions from relatives and friends, support orders and any other benefits or interest in real or personal property.

• • • •

351.5 Sources of information. (a) *Primary sources.* The applicant, recipient, members of his household and public records shall be relied upon as primary sources of information. Information received from applicants, recipients, and members of the household shall be verified. The applicant or recipient shall be required, wherever possible, to provide such verification by documentation.

(b) *Secondary and collateral sources and collateral investigation.* Secondary or collateral sources of informa-

tion are relatives outside the immediate family group, and other persons, agencies, or resources. Collateral investigation means the collection of additional information through contacts with secondary sources such as relatives, employers, banks, insurance companies, school personnel, social agencies, and other appropriate individuals and organizations.

351.6 Verification. Verification of data, which are pertinent to the determination of initial and continuing eligibility or the amount of the assistance grant are essential elements of this investigation.

(a) Documents, personal observation, personal and collateral interviews and contacts, reports, correspondence and conferences, are means of verification.

(b) When information is sought from collateral sources other than public records because the applicant or recipient cannot provide verification, there shall be a clear interpretation to the applicant, recipient or legally responsible relatives of what information is desired, why it is needed, and how it will be used.

• • • •

351.8 Decision of initial eligibility and payment of assistance grants. (a) Decision on initial eligibility is the conclusion or determination reached at any point in the application process. Such decision, as approved on supervisory review, shall constitute the decision of the social services official. The decision shall be one of the following:

(1) *Accepted for assistance.* This means that eligibility has been fully established through investigation or that emergency need and presumptive eligibility has been established and authorization for assistance has been made and approved by the social services official.

(2) *Not accepted for assistance.* Applications are denied and not accepted for assistance when:

(i) In the course of the application interview the information given by the applicant establishes, without the need for further investigation, that he is ineligible.

(ii) Ineligibility is determined in the course of or upon completion of the investigation, or if the applicant refuses to comply with any requirement essential to the determination of eligibility.

(3) *Terminations without decision.* No decision is required when:

(i) An application is withdrawn by the applicant.

(ii) The social services official documents that the applicant has died, cannot be located, or has left the district prior to the completion of the investigation.

(b) The decision to accept or deny the application shall be made as soon as the facts to support it have been established by investigation but not later than 30 days from the date of application except where the applicant requests additional time or where difficulties in verification lead to unusual delay, or for other reasons beyond the social services official's control. The applicant shall be notified in writing of the decision in accordance with department regulations. The reason for delay shall be recorded in the case record and communicated to the applicant.

(c) (1) When eligibility has been established the application shall be accepted for assistance pending the development of potential resources i.e., support from relatives, adjustment of insurance, or eligibility for benefits. It shall be the responsbility of the social services official to fully explore and develop all such resources.

(2) When eligibility has been established, payment of the regularly recurring grant shall ordinarily be made effective as of the date of application.

(3) A first payment shall be made as soon as possible but not later than within 30 days of the application.

(4) When eligibility has not been established but immediate need is determined to exist, an emergency or predetermination grant of assistance shall be made in accordance with department regulations.

• • • •

PART 370
Home Relief

• • • •

370.4 **Financial requirements.** [Additional statutory authority: Social Services Law, § 58] Persons who are unable to provide financially for themselves, who are unable to secure support from legally responsible relatives or other source, who are not receiving needed assistance or care, and who are not eligible or presumptively eligible for AABD, ADC, or not eligible for EAF shall be eligible for home relief. Home relief includes assistance granted to veterans under existing laws, but does not include medical assistance, foster care of children, or care classifiable under the law as public institutional and other adult institutional care. Eligibility shall be determined for each application in accordance with applicable regulations of the department and in accordance with the principles stated above. The initial determination shall include consideration of each of the following factors which are related to eligibility and which are pertinent to the issuance of the home relief grant in the form and frequency required in the individual circumstances:

(a) *Responsibility of applicant.* Insofar as practicable, responsibility shall be placed upon the applicant for home relief to provide verified information concerning his previous maintenance, loss of income and the extent and duration of current need. Both the method and content of investigation shall be aimed at assisting the applicant to return to self-support and fully utilize resources related thereto.

(b) *Previous maintenance and reason for application.* For each member of the household applying for assistance, the following shall be determined: the source and amount of previous income or maintenance; the reason and date of its discontinuance; presumptive eligibility for benefits relating to loss of income; and employability and availability for employment. If the applicant is in need of medical assistance only, the application shall be taken for MA in accordance with applicable board rule and department regulation.

Supreme Court, U.S.
FILED
NOV 4 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

v.

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES

GERALD A. NORLANDER
MARTIN A. SCHWARTZ
The Legal Aid Society
of Westchester County
56 Grand Street
White Plains, New York 10601
Tel: (914) 761-9200

Attorneys for Appellees

Washington, D.C. • CLB PUBLISHERS' • LAW PRINTING CO. • (202) 393-0625

TABLE OF CONTENTS

Page

STATUTE AND REGULATION INVOLVED 1

QUESTIONS PRESENTED 3

STATEMENT OF THE CASE 4

SUMMARY OF ARGUMENT 40

ARGUMENT:

I. THE PRESUMPTION THAT PLAINTIFFS TERMINATED THEIR EMPLOYMENT FOR THE PURPOSE OF QUALIFYING FOR PUBLIC ASSISTANCE VIOLATES THE DUE PROCESS CLAUSE BECAUSE THERE IS NO RATIONAL CONNECTION BETWEEN THE GIVEN FACTS AND THE FACT PRESUMED BY THE STATUTE 47

II. DEFENDENT'S ENFORCEMENT OF NEW YORK SOCIAL SERVICES LAW, § 131(11) VIOLATES THE DUE PROCESS CLAUSE BECAUSE THE TIMING OF THE STATE'S FAIR HEARING PROCEDURE DEPRIVED PLAINTIFFS OF AN OPPORTUNITY TO REBUT THE PRESUMPTION PRIOR TO THE IMPOSITION OF THE SANCTION, AND DURING THE SEVENTY-FIVE DAY STATUTORY SANCTION PERIOD 88

A. The State's procedures did not afford plaintiffs a fair opportunity to rebut the presumption 89

B. Due process requires a hearing prior to the imposition of a seventy-five day sanction 96

C. Because of the State's failure to provide plaintiffs with timely hearings, the statutory rebuttable presumption operated as a conclusive presumption during the seventy-five day sanction period 107

Page

III. THE IMPOSITION OF A SEVENTY-FIVE DAY SANCTION ON THE BASIS OF THE PRESUMED FACTS IS ARBITRARY AND IRRATIONAL IN VIOLATION OF THE EQUAL PROTECTION CLAUSE 112

IV. THE CLASS SHOULD BE MODIFIED TO EXCLUDE PERSONS IN THE AFDC CATEGORY 122

CONCLUSION 123

APPENDIX "A" 1a

APPENDIX "B" 1b

APPENDIX "C" 1c

TABLE OF AUTHORITIES

Cases:

Adler v. Board of Education, 342 U.S. 485 (1952) .... *passim*

Armstrong v. Manzo, 380 U.S. 545 (1965) 97,98

Arnett v. Kennedy, 416 U.S. 134 (1974) ..... *passim*

Arteaga v. Silverman, 56 Wis.2d 110, 201 N.W.2d 538 (1972) 56,61

Atlantic Coast Line R.R. v. Ford, 287 U.S. 502 (1933) 52,53

Bailey v. Alabama, 219 U.S. 219 (1911) 53,65,90

Bandini Petroleum Co. v. Superior Court, 284 U.S. 8 (1931) 53,89

Bank of United States v. Dandridge, 25 U.S. (12 Wheat.) 64 (1827) 51

Barnes v. United States, 412 U.S. 837 (1973) .. 52,54,55,56,65

Baxstrom v. Herold, 383 U.S. 107 (1966) 115

Bell v. Burson, 402 U.S. 535 (1971) 90,97,105,108,111

Board of Regents v. Roth, 408 U.S. 564 (1972) 97,98

Page

Bratton v. Chandler, 260 U.S. 110 (1922) 97

Cafeteria & Restaurant Workers Union v. McElroy, 367 U.S. 886 (1961) 98

Carleson v. Remillard, 406 U.S. 598 (1972) 122

Cisco v. Lavine, 72 Misc.2d 1009, 340 N.Y.S.2d 275, *modified on reargument*, 72 Misc.2d 1087, 341 N.Y.S.2d 719 (Sup.Ct. 1973) 93,94

City of New York v. Miln, 36 U.S. (11 Pet.) 102 (1837) 66

Cleveland Board of Education v. La Fleur, 414 U.S. 632 (1974) 44,108,109,110

District 65, Wholesale Union v. Nixon, 341 F.Supp. 1193 (S.D.N.Y. 1972) 60

Edwards v. California, 314 U.S. 160 (1941) 65

Felton v. United States, 96 U.S. 699 (1878) 118

Flemming v. Nestor, 363 U.S. 603 (1960) 97

French v. Edwards, 80 U.S. (13 Wall.) 506 (1872) 51

Fresh v. Gilson, 41 U.S. (16 Pet.) 327 (1842) 51

Frontiero v. Richardson, 411 U.S. 677 (1973) 75,115,121

Fuentes v. Shevin, 407 U.S. 67 (1972) 97,98,99

Fusari v. Steinberg, 419 U.S. 379 (1975) 98,101

Gaddis v. Wyman, 304 F.Supp. 713 (S.D.N.Y. 1969) 56

Gaddis v. Wyman, 304 F.Supp. 717 (S.D.N.Y. 1969), *aff'd sub nom, Wyman v. Bowens*, 397 U.S. 49 (1970) 48

Gaddis v. Wyman, 336 F.Supp. 1225 (S.D.N.Y. 1972) 13

Garcia v. Silverman, 393 F.Supp. 590 (E.D.Wis. 1975) 56,59

Goldberg v. Kelly, 397 U.S. 254 (1970) ..... *passim*

Goldsmith v. Board of Tax Appeals, 270 U.S. 117 (1926) 97

	Page
Goss v. Lopez, 419 U.S. 565 (1975)	98,101,106,116
Great Atlantic & Pacific Tea Co. v. Ervin, 23 F. Supp. 70 (D. Minn. 1938) (three-judge court)	118
Greene v. McElroy, 360 U.S. 474 (1959)	105
Greer v. United States, 245 U.S. 559 (1918)	53,54
Hagans v. Lavine, 415 U.S. 528 (1974)	122
Hawes v. Georgia, 268 U.S. 178 (1922)	53
Hawk v. Fenner, 396 F.Supp. 1 (D.S.D. 1975)	120
Heiner v. Donnan, 285 U.S. 312 (1932)	89
Home Insurance Co. v. Weide, 78 U.S. (11 Wall.) 438 (1871)	51,54
Hornsby v. Allen, 326 F.2d 605, *adhered to on rehearing*, 330 F.2d 55 (5th Cir. 1964)	97
Jimenez v. Weinberger, 417 U.S. 628 (1974)	*passim*
Joint Anti-Fascist Refugee Committee v. McGrath, 341 U.S. 123 (1951)	98
Jones v. Berman, 37 N.Y.2d 42, 371 N.Y.S. 2d 422 (1975)	94
Kelly v. Wyman, 294 F.Supp. 893 (S.D.N.Y. 1968) (three-judge court)	103
Kennedy v. Mendoza-Martinez, 372 U.S. 144 (1963)	54,97
King v. Smith, 392 U.S. 309 (1968)	46,122
Knowles v. Lavine, 42 App.Div.2d 742, 346 N.Y.S. 2d 296 (2d Dept. 1973), *rev'd on other grounds*, 34 N.Y.2d 721, 356 N.Y.S. 2d 864 (1974)	69
Lascaris v. Wyman, 31 N.Y.2d 386, 340 N.Y.S. 2d 397 (1972)	71
Laskey Bros. of W.Va. v. Warner Bros. Pictures, 224 F.2d 824 (2d Cir. 1955), *cert. denied* 350 U.S. 932 (1956)	50,87
Leary v. United States, 395 U.S. 6 (1969)	54,55,74
Lewis v. Martin, 397 U.S. 552 (1970)	46,122

	Page
Lindsey v. Normet, 405 U.S. 56 (1972)	115
Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911)	89
McFarland v. American Sugar Refining Co., 241 U.S. 79 (1916)	53,55
Manley v. Georgia, 279 U.S. 1 (1929)	53,89
Manning v. John Hancock Mutual Life Ins. Co., 100 U.S. 693 (1879)	51
Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974)	100
Milne v. Berman, 384 F.Supp. 206 (S.D.N.Y. 1974) (three-judge court)	*passim*
Mitchell v. W.T. Grant Co., 416 U.S. 600 (1974)	101,105
Mobile, J. & K.C.R.R. v. Turnipseed, 219 U.S. 35 (1910)	*passim*
Mooney v. Pickett, 4 Cal.3d 669, 483 P.2d 1231, 94 Cal.Rptr. 279 (1971)	61
Morrissey v. Brewer, 408 U.S. 471 (1972)	98
Morrison v. California, 291 U.S. 82 (1934)	53,65
Mourning v. Family Publications Service, Inc., 411 U.S. 356 (1973)	110
Mullane v. Central Hanover Bank and Trust Co., 339 U.S. 306 (1950)	97
Mullaney v. Wilbur, 95 S.Ct. 1881 (1975)	54
Nash v. Florida Industrial Commission, 389 U.S. 235 (1967)	99
Nelson v. Sugarman, 361 F.Supp. 1132 (S.D.N.Y. 1972)	93,94
New York State Board of Social Welfare v. City of Newburgh, 28 Misc.2d 539, 220 N.Y.S. 2d 54 (N.Y. Sup.Ct. 1969)	76

Page

New York State Department of Social Services v. Dublino, 413 U.S. 405 (1973) 66,76,77,114

New York Times Co. v. Sullivan, 376 U.S. 254 (1964) 54

North Georgia Finishing Co. v. Di Chem, 419 U.S. 601 (1975) 101

Owens v. Roberts, 377 F.Supp. 45 (M.D.Fla. 1974) (three-judge court) ..... *passim*

Oyama v. California, 332 U.S. 633 (1948) 90

Peonage Cases, 123 F.671 (M.D.Ala. 1903) 57

Perez v. Lavine, 378 F.Supp. 1390 (S.D.N.Y. 1974) 73,105

Pollock v. Williams, 332 U.S. 4 (1944) 57

Reed v. Reed, 404 U.S. 71 (1971) 45,115,120

Ricard v. Williams, 20 U.S. (7 Wheat.) 59 (1822) 52,55

Richardson v. Perales, 402 U.S. 389 (1971) 111

Roller v. Holly, 176 U.S. 398 (1900) 91

Rothstein v. Wyman, 303 F.Supp. 339 (S.D.N.Y. 1969), *vacated and remanded*, 398 U.S. 275 (1970) 70

In re Ruffalo, 390 U.S. 544 (1968) 91

Shapiro v. Thompson, 394 U.S. 618 (1969) 65,100

Shea v. Vialpando, 416 U.S. 251 (1974) 122

Silver Chrysler Plymouth Inc. v. Chrysler Mot. Corp., 518 F.2d 751, 754 (2d Cir. 1975) 50

Smith v. Illinois Bell Telephone Co., 270 U.S. 587 (1926) 106

Snell v. Wyman, 281 F.Supp. 853 (S.D.N.Y. 1968) *aff'd*, 393 U.S. 323 (1969) 68,70

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969) 98,99,100

Page

Speiser v. Randall, 357 U.S. 513 (1958) 50,54

Stanley v. Illinois, 405 U.S. 645 (1972) ..... *passim*

Torres v. New York State Department of Labor, 32 F.Supp. 432 (S.D.N.Y. 1971) (three-judge court), *vacated and remanded*, 402 U.S. 968 (1971) 100

Tot v. United States, 319 U.S. 463 (1943) 52,53,54,55

Turner v. United States, 396 U.S. 398 (1970) 54,55,65,74

United States v. Adams, 293 F.Supp. 776 (S.D.N.Y. 1968) 55

United States v. Black, 512 F.2d 864 (9th Cir. 1975) 54

United States v. Gainey, 380 U.S. 63 (1975) 54,55,65,74

United States v. Romano, 382 U.S. 136 (1965) 54,56,74

United States Department of Agriculture v. Moreno. 413 U.S. 528 (1973) 45,115,117,118,119

United States Department of Agriculture v. Murry, 413 U.S. 508 (1973) 44,108

Vlandis v. Kline, 412 U.S. 441 (1973) 44,108,109,110

Weber v. Aetna Casualty and Surety Co., 406 U.S. 164 (1972) 118

Weinberger v. Salfi, 95 S.Ct. 2457 (U.S. 1975) 110,111,115,121

Western & A.R.R. v. Henderson, 279 U.S. 639 (1929) 43,52,53,89

Willner v. Committee on Character and Fitness, 373 U.S. 96 (1963) 90,97

In re Winship, 397 U.S. 358 (1970) 102

Wolff v. McDonnell, 418 U.S. 539 (1974) 91,92

Yee Hem v. United States, 268 U.S. 178 53

Yee-Litt v. Richardson, 353 F.Supp. 996 (W.D.Cal. 1973), *aff'd sub nom*, Carleson v. Yee-Litt, 412 U.S. 924 (1973) 102

Page

Federal Provisions:

28 U.S.C. § 1343(3) 37
§ 2281 37
§ 2284 37

42 U.S.C. § 601, *et seq.* 122
§ 633(g) 105
§ 1983 37

29 C.F.R. § 570 105

45 C.F.R. § 205.1 105
§ 205.10 93

Civil Rules of the Southern and Eastern Districts of New York, Rule 9(g) 95

Federal Rules of Civil Procedure
Rule 23(b)(2) 39
Rule 23(c)(1)(4) 123

State Provisions:

N.Y. Constitution, Art. XVII, § 1 106,109

N.Y. Labor Law
§ 652(d) 31
§ 652(e) 31
§ 652(f) 31

New York Social Services Law
§ 17 13
§ 20 13
§ 34 13
§ 104 68
§ 104(1) 69
§ 104-a 113
§ 105 68
§ 106-b 111
§ 131(1) 109
§ 131(4) 66
§ 131(11) ..... *passim*
§ 131-a(1) 14,31,69,109

Page

§ 132 112,113
§ 133 5,95,99
§ 157 109
§ 158 46,109
§ 158(b) 113
§ 164 109
§ 166 5,43,93,106
§ 350-j 94
§ 360 68

18 N.Y.C.R.R. Part 350 90

18 N.Y.C.R.R. Part 351 44,72,90,112
§ 351.1(a) 113
§ 351.2 44,113

18 N.Y.C.R.R. Part 352 112
§ 352.3(a) 69
§ 352.11 113
§ 352.12 113
§ 352.15 113
§ 352.15(d) 69
§ 352.16 68,69,113
§ 352.17 113
§ 352.19 113
§ 352.27 68,69
§ 352.28(b) 68,69

18 N.Y.C.R.R. Part 358 5,43,93
§ 358.4 106,109
§ 358(c)(1) 94
§ 358.18 5,16,43,93
§ 370.4(h)(2) 48
§ 385.6 61,62
§ 385.7 ..... *passim*

New York Laws 1824, c.331(v) 32,67

Legislative History:

2 McKinney N.Y. Session of Laws of 1971
2510 74
2511 74
2636 74

Page

Other Authorities:

M. Argyle, The Social Psychology of Work (Pelican, 1974) 58

D. Baum, The Welfare Family and Mass Administrative Justice (Praeger, 1974) 91,94,102,103

W. Bowen & T. Finegan, The Economics of Labor Force Participation (Princeton University Press, 1969) 84

Bureau of National Affairs, Survey No. 91, Turnover and Job Satisfaction (July 1970) (A.410) 57

Comment, Due Process and the Right to a Prior Hearing in Welfare Cases, 37 Ford.L.Rev. 604 (1969) 102,104

B. Diamond, The Children of Leviathon: Psychoanalytic Speculation Concerning Welfare Law and Punitive Sanctions 57 Calif.L.Rev. 357 (1966) 74,75

Dunnette, *et al.*, Why Do They Leave, 50 Personnel (1973) 58

E. Durbin, Welfare Income and Employment, in 1 Labor Economics and Urban Studies (Praeger, 1969) 59

J. Feagin, Subordinating the Poor: Welfare and American Beliefs (Spectrum, 1975) 57,70,73,76 77,97

F. Fournies, The Real Reasons People Quit, American Management Society Report (Oct. 1969) 57

M. Fried, The World of the Urban Working Class (Harvard, 1973) 64

L. Goodwin, Do The Poor Want to Work? (Brookings 1972) 71,75,80

L. Goodwin, Middle Class Misperceptions of the High Life Aspirations and Strong Work Ethic Held by the Welfare Poor, 43 American Journal of Orthopsychiatry 554 (July 1973) 70,77

Page

J. Handler, Justice for the Welfare Recipient: Fair Hearings in AFDC-The Wisconsin Experience, 43 Soc.Serv.Rev. 12 (1969) 102

Hearings Before the Sub-Committee on Fiscal Policy of the Joint Economic Committee on Problems in Administration of Public Welfare Programs 92d Cong. 2d Sess. (1972) 71

Institute for Research on Poverty, The New Jersey Graduated Work Incentive Experiment (Summary Report 1973) 83

L. Irelan, Low Income Life Styles (HEW, 1971) 79

K. Kahl, New Light on Employee Turnover, Supervisory Management (April, 1969) 58

J. Ledvinkin, Race of Employment Interviewer and Reasons Given By Black Job Seekers for Leaving Their Jobs, 58 Journal of Applied Psychology 362 (1973) 58

R. Levy, *et al.*, eds., Social Welfare and the Individual (Foundation, 1971) 76

Mashaw, The Management Side of Due Process: Some Theoretical and Litigation Notes on the Assurance of Accuracy, Fairness, and Timeliness In the Adjudication of Social Welfare Claims, 59 Cornell L.Rev. 772 (1974) 103-104

E. May, The Wasted Americans (1964) 76

D. Moynihan, The Politics of a Guaranteed Income (Vintage, 1973) 61,71,75,76,77,78

New York City Human Resources Administration, Welfare Case Turnover in 1972 (Preliminary Rep. Dec. 1973) 59

N.Y. Times, Oct. 17, 1975 73,103

N.Y. Times, Oct. 6, 1974, p. 76, col. 1 77

N.Y. Times, Aug. 20, 1974, p. 39, col. 1 73

N.Y. Times, Nov. 17, 1971, p. 73, col. 3 77

Note, 25 Hastings L.J. 678 (1974) 4

Page

O'Neil, Of Justice Delayed and Justice Denied: The Welfare Prior Hearing Cases, The Supreme Court Review, 171 (1970) 102,103,106

M. Ostrow & A. Dutka, Work and Welfare in New York City (Johns Hopkins, to be published 1975) 59,64

J. Pechman & P. Timpane, Work Incentives and Income Guarantees (Brookings, 1975) 61,82,83

F. Piven & R. Cloward, Regulating the Poor: The Functions of Public Welfare (Vintage, 1972) ..67,72,73,76, 77,104

Porter, *et ano.*, Organizational, Work and Personal Factors in Employee Turnover and Absenteeism, 80 Pyschological Bulletin 151 (Aug. 1973) 58

Porter, *et al*, Organizational Commitment, Job Satisfaction and Turnover Among Psychiatric Technicians, 59 Journal of Applied Psychology 603 (Oct. 1974) 58

President's Commission on Income Maintenance Programs, Report: Poverty Amid Plenty, The American Paradox (U.S. G.P.O. 1969) 60,77,81,83

Report to the Secretary of HEW, Work in America (MIT Press, 1973) (A.327) 58,77

B. Schiller, Empirical Studies of Welfare Dependency: A Survey, 8 Journal of Human Resources 19 (Supp. 1973) 64,77,78,79-80

G. Steiner, The State of Welfare (Brookings, 1971) .72,73,77,81

Subcommittee on Fiscal Policy Joint Economic Committee, Studies in Public Welfare, Paper No. 13, 93d Cong. 2d Sess. 69

United States Department of Health, Education and Welfare, Fair Hearings in Public Assistance (Jan. 1975) 103

United States Department of Labor, Bureau of Labor Statistics, Report 410, Work Attitudes of Disadvantaged Black Men (U.S.G.P.O., 1972) 84

Page

F. Wickert, Turnover and Employee's Feelings of Ego Involvement in the Day to Day Operations of a Company 4 Personnel Psychology 185 (1951) 58

C. Williams, Why Do They Quit?, 30 Administrative Management No. 10 57-58

C. Williams, Why Workers Say 'I Quit', Supervisory Management (July 1968) 58

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

v.

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEES

STATUTE AND REGULATION INVOLVED

The three-judge court enjoined the enforcement of the second sentence of Section 131(11) of the New

York Social Services Law and its regulatory counterpart, 18 N.Y.C.R.R. 385.7(b). The second sentence of Section 131(11) provides:

> "Any person who applies for home relief or aid to dependent children or requests an increase in his grant within seventy-five days after voluntarily terminating his employment or reducing his earning capacity *shall*, unless otherwise required by federal law or regulation, *be deemed to have voluntarily terminated his employment* or reduced his earning capacity *for the purpose of qualifying for such assistance* or a larger amount thereof, in the absence of evidence to the contrary supplied by such person." *N.Y. Social Services Law*, § 131(11) (McKinney Supp. 1974). (Emphasis added).[1]

The regulation of the New York State Department of Social Services which implements the second sentence of Section 131(11) provides, in relevant part:

> "385.7 Sanctions . . . . (b) Any person who applies for HR or requests an increase in his grant, within 75 days after voluntarily terminating employment or reducing his earning capacity or similarly within

---

[1] The first sentence of Section 131(11), which is not in issue in this case, provides:

> "Any person who voluntarily terminated his employment or voluntarily reduced his earning capacity *for the purpose of qualifying for home relief* or aid to dependent children or a larger amount thereof shall be disqualified from receiving such assistance for seventy-five days from such termination or reduction, unless otherwise required by federal law or regulation." *N.Y. Social Services Law*, § 131(11) (McKinney Supp. 1974). (Emphasis added).

> 30 days for ADC, shall be deemed to have voluntarily terminated employment or reduced his earning capacity for the purpose of qualifying for such or larger amount thereof in the absence of evidence to the contrary supplied by such person." 18 N.Y.C.R.R. § 385.7 (1974).

QUESTIONS PRESENTED

1. Whether a statutory presumption that every person who applies for public assistance within seventy-five days after voluntarily terminating employment "shall be deemed to have voluntarily terminated his employment for the purpose of qualifying for . . . assistance . . . in the absence of evidence to the contrary supplied by such person," lacks a rational connection between the given facts and the presumed motive, in violation of the Due Process Clause.

2. Whether plaintiffs were denied a fair opportunity to rebut the statutory presumption that they left their employment for the purpose of qualifying for public assistance, in violation of the Due Process Clause, where the hearings at which they might rebut the presumption were generally not decided until well into and in some cases even after the end of the seventy-five day sanction period.

3. Whether the imposition of the seventy-five day sanctions on the basis of the statutory presumption that plaintiffs terminated their employment for the purpose of qualifying for public assistance arbitrarily and irrationally deprived plaintiffs of needed public assistance in violation of the Equal Protection Clause.

4. Whether the plaintiff class properly included persons in the federal Aid to Families With Dependent Children category.

STATEMENT OF THE CASE

Plaintiffs-appellees (hereafter "plaintiffs") were needy, individuals who were disqualified from receiving any Home Relief assistance for two and one-half months (75 days) by agents of the New York State Department of Social Services.[2] These sanctions were imposed due to the enforcement of the statutory presumption that plaintiffs terminated their employment for the specific purpose of qualifying for Home Relief assistance. *N.Y. Social Services Law*, § 131(11) (McKinney Supp. 1974); 18 N.Y.C.R.R. § 385.7(b). The statute provides that every person who applies for Home Relief assistance within seventy-five days of employment termination is "deemed to have voluntarily terminated his employment . . . for the purpose of qualifying for such assistance . . . in the absence of evidence to the contrary supplied by such person." *Id.*

The record substantiates that not even one of the twenty-one plaintiffs whose facts were before the court below *in fact* terminated his or her employment for the purpose of qualifying for Home Relief assistance. Because plaintiffs were presumed to have

[2]Home Relief is New York's program for general assistance. "Every state has a program of general assistance separate and distinct from [federal] categorical assistance programs." Note, 25 Hastings L.J. 678, 680 (1974).

terminated their employment for the purpose of qualifying for Home Relief assistance, the seventy-five day sanctions created by the first sentence of Section 131(11) were imposed against them, even though they terminated their employment for ordinary purposes.

Plaintiffs were not afforded hearings prior to the imposition of the seventy-five day sanctions. The only opportunity they had to rebut the statutory presumption was at "fair hearings" offered by the defendant-appellant (hereafter "defendant") Commissioner of the New York State Department of Social Services. *N.Y. Social Services Law*, § 166 (McKinney Supp. 1974); 18 N.Y.C.R.R. Part 358. However, these hearings need not be decided for ninety days, 18 N.Y.C.R.R. 358.18, and in fact they were not decided until long into and in some cases even after the end of the seventy-five day sanction period. Pending the fair hearing decisions, New York State law precluded the granting of emergency assistance to plaintiffs. *N.Y. Social Services Law*, § § 131(11), 133 (McKinney Supp. 1974). (*See* A. 480-481, 578).

The imposition of the seventy-five day sanctions based on the statutory presumption caused the plaintiffs grave and irreparable injury. Many were left without the means to pay their rent and buy food and other necessities. Several went hungry and were threatened with eviction.

STATEMENT OF FACTS

A. Plaintiffs

1. Plaintiff Ronald Milne

Plaintiff Ronald Milne is a resident of Yonkers, New York, who had been regularly employed for seventeen years. (A.10,18,247,264). Milne worked for the New York State Armory in Yonkers for four years; he worked for the Phelps Dodge Company for twelve years; and he worked as a security guard for Columbia University in New York City for more than a year, until November 2, 1973. (A.10,18,247,264,271).

On November 2, 1973, Milne was suspended without pay from his job. His supervisor notified him that he would be discharged for allegedly being intoxicated and away from his post. (A.10,18,247,264,271). Milne contested his dismissal by invoking union grievance procedures. (A.10,11,18-19,247,264). At an initial grievance proceeding held November 5, 1973, the decision to dismiss Milne was upheld. (A.11). Milne appealed. (A.11). At a second grievance proceeding, Milne was told that if he would submit a letter of resignation, his employment record at Columbia University would be cleared of any reference to allegations of misconduct or attempts to dismiss him, and that if he did not resign, he would be discharged. (A.11, 18-19,247,264,577). Milne decided to resign, upon the advice of his union representative, to avoid the stigma of being fired and to enhance his prospects for finding new employment. (A.11,18-19,247,265,267-268,577). Milne submitted a handwritten, pre-dated letter of resignation to his supervisor. (A.11,19,28,247,265). In his letter, Milne stated:

> "I Ronald Milne a guard with Columbia University am resigning as of November 9th for personal reasons also to better myself with less travel." (A.28).

After submitting his letter of resignation, Milne unsuccessfully searched for new employment. (A.11, 265). By November 16, 1973, he stated:

> "... I had exhausted my savings, was unable to find a new job and I was unable to provide myself with the necessities of food and lodging. I applied for Unemployment Compensation at the New York State Department of Labor." (A.265).

The Department of Labor denied his application for unemployment insurance benefits upon the ground that he had allegedly provoked his own discharge. (A.266, 270-271).[3] Milne finally went to the Yonkers office of the Westchester County Department of Social Services ("local agency") to request public assistance to pay for his food and rent. (A.11,18,247,265). A "certification examiner" denied his request in a written notice which stated, in part:

---

[3] Milne appealed the denial of his unemployment benefits, but his Department of Labor hearing was not held until December 21, 1973, and was not decided until January 3, 1974. (A.266,268,270-271). Milne prevailed at the hearing, but did not begin to receive unemployment benefits until January 17, 1974, seventy-six days after his employment termination. In his decision, the Unemployment Insurance Hearing Referee found that:

> "It is significant to note herein that the employer presented no evidence of substantive force and probative effect to establish its contention that claimant [Milne] was intoxicated and off his post during working hours." (A.270-271).

"Your application for public assistance has been denied for the following reasons:
As per your application, you resigned from your job at Columbia University on 11/2/73. *A 75 day sanction* is in effect from 11/2/73 - 1/15/74 before you would be eligible for a public assistance grant. If you are not satisfied with this decision you have the right to ask for a fair hearing." (A.29) (Emphasis added).

Milne's counsel attempted in vain to convince the certification examiner that Mr. Milne should not have been sanctioned under the provisions of Section 131(11) of the New York Social Services Law because he did not resign from his job for the purpose of qualifying for public assistance. (A.11-12,20,272-275). The Deputy Commissioner for Legal Affairs of the local agency, a lawyer, also approved the determination to impose the 75 day sanction. (A.12,20,275).

A request by Milne's counsel for an expedited "Fair Hearing" was refused by the State Commissioner's agents on December 13, 1973. (A.22,250,275).[4]

Milne commenced this action on December 19, 1973. (A.1). By December 28, 1973, Milne was eating only

---

[4]Milne wanted to show at his hearing that he did not resign in order to qualify for public assistance, that his salary prior to his resignation was higher than public assistance benefits, that he had worked steadily for seventeen years before his resignation, that he resigned only after fighting for his job through two stages of a grievance procedure (and only after being threatened with dismissal) and that he resigned upon the advice of his union representative in order to improve his future employment prospects. (A.267-268).

one meal a day, his rent was overdue, his utility bills were unpaid, and he feared eviction. (A.12-13).[5]

On January 2, 1974, the District Court made an order to show cause why a preliminary injunction should not issue restraining defendants from enforcing the challenged statute against Milne. (A.8-9,101). On January 9, 1974, before a hearing on the pending order to show cause was held, the Westchester County Commissioner finally "reconsidered his decision and determined Milne to be eligible for assistance from the date [November 16, 1973] when his application was rejected." (A.505) (See also A.101; Brief for Appellant, Page 10; Jurisdictional Statement, Page 9.)[6] Defendant's agent, the local commissioner, thus "conceded his error" in subjecting Milne to the sanction for more than fifty days. (Brief for Appellant, Page 10).

---

[5]Milne had been a building superintendent for his landlord for nine years, and he received a forty-percent reduction in rent in exchange for his services. (A.12). On December 28, 1973, Milne was two months behind in his rent payments, and another month's rent was due January 1, 1974. (A.12).

[6]Monetary assistance that had been withheld from Milne for fifty-four days was authorized by the Westchester County Commissioner on January 9, 1974. (A.250,268). Milne's motion for a preliminary injunction scheduled to be heard January 11, 1974, (A.33), was then withdrawn without prejudice, pursuant to a stipulation "so ordered" by the District Court. (A.33-34,101). Milne returned two public assistance checks to the Westchester County Department of Social Services after he began receiving his unemployment insurance benefits on January 17, 1974. (A.269,547-548).

2. Intervenor-Plaintiff Douglas Streeter

Douglas Streeter is a resident of Port Chester, New York. (A.276). He worked for the Life Saver Company in Port Chester as a "hop filler" on an assembly line from August 30, 1973 until October 15, 1973. (A.251,276).[7] On October 14, 1973, Streeter was told by his employer that the Life Saver Company had adopted a new rule forbidding its employees to wear beards. (A.251,276,577). Streeter's beard could not be shaved without difficulty due to an extremely sensitive skin condition. (A.251,276). He offered to wear a mask, but his employer said that if Streeter would not shave he need not report for work. (A.251,277,577). Rather than be fired, Streeter did not report to work at the Life Saver Company on October 15, 1973, and he began to look for a new job. (A.251,277).

By October 30, 1973, Streeter had not found new employment, he had exhausted all his savings, and he could not afford to pay for his food and rent. (A.205,251,277). On October 31, 1973, Streeter applied for public assistance. (A.58,205-206,251,277). According to an inspector in the Quality Control Bureau of the Department of Social Services of the County of Weschester,

> "On October 31, 1973, Mr. Streeter was advised in writing by the Department of Social Services that his application for public assistance had been denied because he had terminated his employment but that he would be eligible to reapply *after a sanction period of seventy-five (75) days* on December 30, 1973." (A.58) (Emphasis added).

[7]Streeter had previously attended college for about three years but he could not complete his studies for financial reasons. (A.276).

On December 5, 1973, Streeter found new employment as an orderly at a Port Chester nursing home. (A.52,58,206,251,277). However, Streeter was discharged on January 4, 1974 for allegedly not informing his employer that he could not report for work because he was ill. (A.53,58-59,206,251-252,277-278,577). Streeter looked for new employment without success. (A.53,206,252,278).

By January 13, 1974, Streeter had no money for food and his January rent was unpaid. (A.53, 206,252,278). He requested public assistance on that date at the local agency. (A.53-54,58,206,252,278). An agency employee told Streeter that he could not receive assistance for 75 days because he allegedly provoked his own discharge. (A.53-54). On January 14, 1974, Streeter then applied for but did not receive unemployment insurance benefits because he had not worked the requisite number of weeks. (A.278).

On January 17, 1974, Streeter received a written notice of denial of his application for public assistance. (A.54). The notice stated in part:

> "You were terminated from your employment at Port Chester Nursing Home on December 28, 1973. *You are being sanctioned for 75 days* and may reapply on April 13, 1974.
> If you are not satisfied with this decision, you have the right to ask for a Fair Hearing." (A.282) (Emphasis added).

Streeter next went for help to the Carver Center, a private social agency in Port Chester, where a social worker called the Department of Social Services to

request the assistance Streeter needed to pay for his food and rent. (A.279). Streeter was finally referred by the Carver Center worker to the Legal Aid Society on January 24, 1974, after the Department of Social Services refused to reconsider the imposition of the 75 day sanction. (A.279).

On January 25, 1974, the District Court issued an order to show cause why Streeter should not be permitted to intervene, and temporarily restrained the enforcement of the challenged provisions against Streeter. (A.49-51,102). Streeter then received from the Westchester County Department of Social Services a grant to help pay for his rent, and eleven dollars with which to buy food for ten days. (A.280).

A "fair hearing" was requested by Streeter on January 28, 1974. It was first scheduled to be held February 28, 1974, but it was adjourned over Streeter's protest to March 20, 1974. (A.280-281). The District Court granted Streeter's motion for leave to intervene as a plaintiff on March 27, 1974. (A.200-201).

On April 4, 1974, sixty-six (66) days after Streeter's request, and more than ninety (90) days after his employment termination, the State Commissioner rendered a "Decision After Fair Hearing" reversing the local agency decision to impose the 75 day sanction against Streeter and finding him eligible for Home Relief assistance. (A.459-460).

In his decision, the State Commissioner said:

> "(1) Appellant applied for Home Relief on January 13, 1974, and is currently in receipt of assistance pursuant to a Federal Court order. On January 16, 1974, *the agency determined to deny appellant's assistance because he terminated his employment for the purpose of qualifying for public assistance.*

> (2) On January 2, 1974, the appellant was terminated from his employment because he failed to report for work on December 31, 1973. However, he did provide a valid reason for failing to report to work. Appellant was ill and so notified his employer.
>
> * * *
>
> The credible evidence establishes that appellant failed to report for work because he was ill. The evidence further establishes that appellant was surplus labor for the job and that was the reason for his employment being terminated. Accordingly, the agency erred in denying public assistance to appellant." (A.459-460) (Emphasis added).

Thus the State Commissioner agreed that Douglas Streeter had been sanctioned erroneously by his agents.[8]

3. Intervenor-Plaintiff Robert C. Lee

Robert C. Lee was 25 years old and lived alone in Mount Vernon, New York. (A.64,78). Lee had been steadily employed since 1967. (A.63). He worked as a machinist making "JIC jig tools" for telephone communications equipment. (A.63). His pay as a machinist was $3.35 per hour; his monthly take home pay was about $470.00. (A.63,78).[9]

---

[8] Employees of local social services departments act as agents of the State Commissioner. *N.Y. Social Services Law*, § § 17, 20, 34 (McKinney Supp. 1974). *See Gaddis v. Wyman*, 336 F. Supp. 1225, 1227 (S.D.N.Y. 1972).

[9] Home Relief assistance provides $94 per month plus a rent allowance to a single individual without any income. *N.Y. Social*

On November 18, 1973, Lee was injured in an automobile accident. (A.63,254). On January 14, 1974, Lee's employment was terminated because of absences which resulted from his injuries. (A.64,71,254).

After losing his job, Lee looked for new work without success. (A.64). By January 29, 1974 Lee had no more money with which to purchase food. (A.64-65,78,254). He owed $360.00 in back rent since being injured in the auto accident in November, 1973. (A.64-65,70,254). Lee applied for Home Relief assistance on January 29, 1974, and told persons at the local agency that he desperately needed assistance. (A.64,78,254,505-506,510). He was not given any assistance, but was told to return the next day for an interview. (A.64,78,254). On January 30, 1974, a case worker at the local agency told Lee that there was nothing that she could do, because he had to wait until 75 days passed after termination of his employment before he could be eligible for any assistance. (A.64-65,78,254). Lee demanded to talk with a supervisor, who also refused to authorize any assistance but who told Lee to obtain a letter from his former employer. (A.65,71,78-79). Lee submitted to the local agency the requested letter and a letter from his landlord threatening him with eviction. (A.65,71). On January 31, 1974, Lee's application for assistance was denied, pursuant to a written notice which stated, in part:

> "Your application for public assistance has been denied for the following reasons:

Services Law, §131-a (McKinney Supp. 1974). The maximum shelter allowance payable for one person in 1973 in Westchester County was $155. (Westchester County Caseworker's Manual of Assistance, Page A-4). The maximum amount of public assistance payable to Lee thus was $249 per month.

> Your employment was terminated due to the following reasons: Combination of excused and unexcused lateness and absenteeism.
>
> If you are not satified with this decision, you have the right to ask for a fair hearing . . . ."

Lee described his dialogue with the supervisor at the local agency as follows:

> "I asked the supervisor, 'what do I need that would make me eligible,' and 'what do I have to do in order to get some help.' The supervisor told me that there was nothing I could do, because he knew all he needed to know . . . . He said I should go to the Legal Aid Society." (A.65-66).

Because he was destitute and his requests for assistance had been denied, Lee could not afford to eat. (A.66,82,254-255). On January 29, 1974, Lee had eaten only lettuce; on January 30, 1974, he had only a doughnut and tea. On January 31, 1974, he suffered dizzy spells and cramps in his stomach, and had nothing to eat until his counsel loaned him money for a meal. (A.66).

On February 1, 1974, the District Court issued a temporary restraining order and an order to show cause to hear Lee's motions to intervene as a plaintiff and for preliminary injunctive relief. (A.60-62,102). After being restrained from enforcing the challenged statute against Lee, the local agency granted him assistance. (A.450). Lee's motion to intervene was granted by an order dated March 27, 1974. (A.200-201).

A "fair hearing" was first scheduled for Lee by the State Commissioner for April 4, 1974, about two months after his counsel's request for an expedited hearing, (A.81,255,578), and more than 75 days from

the date of his employment termination. (A.255,578). Lee's hearing was adjourned and never completed, (A.450,555; Jurisdictional Statement, 10), apparently because he received benefits for the remainder of the statutory sanction period after the restraining order was issued by the District Court.[10]

4. Intervenors-Plaintiff Joe, Willie, Odell, and John Beverly

Joe, Willie, Odell and John Beverly are four brothers who were 23, 20, 18, and 17 years of age, respectively. (A.150,156,161). They were irregularly employed until January 11, 1974 as laborers at the Emerson Poultry Farm near Middlesex, in Yates County, New York, receiving wages of $2.00 per hour. (A.150, 156,161,461,466,473).[11]

On January 10, 1974, the brothers and a sister with whom they lived were evicted from their home near the

[10]The time lapse in scheduling Lee's hearing was not unusual, and was within the 90 day limit allowed under 18 N.Y.C.R.R. § 358.18. The three-judge court described such a time lapse as making the hearing offered to plaintiffs a "totally meaningless" opportunity for a hungry person like Lee to rebut the presumption and avoid the sanction. *Milne v. Berman*, 384 F.Supp. 206, 211 n.5 (S.D.N.Y. 1974). (A.577).

[11]The brothers' former employer testified at their fair hearing, "Joe worked pretty steady for us right along, and some of these other boys here; Odell and John, they were in school .... You know, they were in school, out of school. Some days they would work, and some they wouldn't .... But Joe was the one that was the regular worker." (A.469).

Emerson Poultry Farm. (A.150,156,161,186,466). All five persons moved to their mother's two room apartment in Geneva, New York, about eighteen miles from the poultry farm, and a few days later the four brothers moved to the two room apartment of another sister in Canandaigua, New York, about fifteen miles from the farm. (A.151,157,162,466). The brothers terminated their employment because none of them had a car, or a driver's license, and there was no public transportation available to take them to the farm from Canandaigua. (A.151,157,162,466).

The brothers unsuccessfully tried to find new work in Canandaigua,[12] and they could not find suitable housing to relocate near the poultry farm. (A.151,153, 157,158,162,164,171,467,471-473).[13]

[12]Joe Beverly did find a temporary job with a janitorial service in Canandaigua, which lasted only from February 22 to February 28, 1974). (A.153).

[13]Odell and John Beverly said: "It was especially hard [for us to find a new apartment] because we are black and there are very few black people in that area." (A.162). The State Commissioner found that "[a]n officer of the Emerson Poultry Company testified that there was a house trailer available to rent ... and in addition the employer agreed to advance the appellant ... the first two months' rent on the aforementioned trailer." (A.461-462). The employer testified, in part, "[s]ometimes, I guess, they had a trailer that was available for the boys at one time .... When they called this morning ... I said, 'well, I better find out about the trailer?' ... I called the people-my golly, they rented the trailer." (A.467). The employer also testified that the Beverlys would have been expected to repay any advance for a house trailer. (A.472). John Beverly testified that he already was in debt to Mr. Emerson, and that he and his brothers could not afford the monthly cost of living in a trailer. (A.473).

Joe, Odell and John Beverly went to the Canandaigua office of the Ontario County Department of Social Services because they were destitute and their sister could not afford to continue to house and support them. Their requests for emergency assistance were orally denied, and they were told to return separately on January 29, 30 and 31, 1974. (A.151-152; 162-163,188,462). Joe was denied assistance on January 29, 1974, without written notice of the reason, and his brothers, after learning of Joe's denial, did not return. (A.152,163,189,451,475). They were later provided temporary shelter by a family receiving public assistance, and they received some temporary assistance for food from the St. Vincent de Paul Society. (A.152, 157,189).

On February 20, and 22, 1974, all of the brothers returned to the local agency, and they again requested assistance. They were told that they could not receive aid for 75 days from the date of their last employment. At the insistence of a volunteer worker, a written denial notice was provided by the local agency on February 25, 1974. (A.152,157-158,163-164,169-170,173-174, 189-190). The notice stated in part:

> "Your application for public assistance has been denied because you quit your job without good cause.
>
> If you believe this action should not be taken, you may request a state fair hearing . . ." (A.173,174).

On February 25, 1974, an expedited "fair hearing" was requested for the brothers. (A.172). A hearing was held on March 14, 1974. (A.284-285,463-478). The District Court issued an order to show cause and an order temporarily restraining enforcement of the

challenged statute on March 15, 1974 pursuant to which the Beverlys received assistance. (A.147-149). The Court later granted the Beverlys' motion to intervene. (A.214-215).

The State Commissioner rendered his "Decision After Fair Hearing" on March 28, 1974, 31 days after the request, about 75 days after the Beverlys left their employment. He found that the Beverlys voluntarily left their employment, explicitly relied upon the challenged statutory presumption, and affirmed the local agency's imposition of the 75 day sanction. (A.461,462,517).

B. Applicants for Intervention

1. Roy Levee

Roy Levee is a resident of New York City. (A.38.). He had picked orders in the warehouse of a Brooklyn company until about December 10, 1973. On that date he was discharged because he had missed several days of work due to his wife's illness. (A.38-39).[14] Levee tried to find new employment, and he reported weekly to his union in the hopes of finding work, without success. (A.39,42).

Because Levee was unable to pay his rent, his landlord obtained a judgment of eviction against him on January 15, 1974. The warrant of eviction was stayed by the landlord-tenant court until January 21, 1974, to

---

[14]Levee previously received public assistance from about March 1, 1973 to August 1, 1973, when he found the warehouse job and requested the local agency to close his case. (A.38).

provide Levee with a final opportunity to pay his rent. (A.39,43). Levee was destitute. (A.39).

At the time, Levee was under the supervision of the New York State Narcotics Addiction Control Commission (NACC). (A.39). Upon learning of Levee's predicament, his NACC aftercare officer wrote a letter to the New York City Department of Social Services ("local agency") requesting it to provide public assistance to Levee. (A.39).

On January 15, 1975, Levee went to the local agency with the letter from his NACC officer and the eviction judgment, but his application for assistance was rejected. (A.39-40,43-44). His denial notice stated, in part:

> "After careful consideration of your application for Public Assistance, we find that you are ineligible for the following reasons:
>
> You have provoked the firing of your position and are therefore ineligible for Public Assistance for 75* days . . . ,
>
> *You will be eligible to reapply on 2/19/75." (A.44).

A fair hearing was requested by Levee's counsel, but the State Commissioner's agents refused her request to expedite it. (A.39-40,258,309). On January 21, 1974, the District Court issued an order to show cause and temporarily restrained enforcement of the 75 day sanction pending a hearing on Levee's motions for leave to intervene and for a preliminary injunction. (A.35-37,101-102,258). Levee was provided assistance to avert his eviction. The local agency then "reconsidered its decision." (A.452). On January 25, 1974, the return date of the order to show cause, counsel for the local agency represented to the Court that Levee would

no longer be disqualified pursuant to Section 131(11), and the District Court then denied Levee's motions. (A.101,102,104,258,308,452).

2. Shirley Miller

Shirley Miller was thirty-five years of age and worked as a part-time housekeeper for fifty dollars per week. (A.89). Between December 18 and December 28, 1974, she missed several days work because she had an abortion. (A.90-91,96-99). Miller was discharged by her employer because of her absences. (A.90). She looked for new work and reported to the New York State Department of Labor for a job referral, without success. (A.90).

Two hundred fifty dollars behind in her rent payments, and without any income or resources, Miller requested public assistance with the help of a legal services office investigator on January 22, 1974. (A.90).[15] The Dutchess County Department of Social Services denied her application for assistance pursuant to the challenged statute. (A.89-91). Efforts of Miller's counsel to persuade the local agency that Miller did not quit her job in order to qualify for public assistance were unsuccessful. (A.91).

On February 15, 1974, the District Court issued an order to show cause why Miller should not be allowed

---

[15]Earlier, on December 12, 1973, and before her abortion, Miller had requested assistance at the local agency because she could not pay her December rent. That request was denied on the ground that she had allegedly left her employment, even though she was still employed. (A.89).

to intervene and why her motion for a preliminary injunction should not be granted. (A.87-88,102-103).[16] On February 19, 1974, a fair hearing was held. (A.91). On March 12, 1974 the State Commissioner rendered a decision favorable to Miller, reversing the local agency's denial of assistance. In his decision, he said:

> "Section 131(10) of the New York Social Services Law provides that a person who voluntarily terminates employment shall be ineligible for public assistance for 75 days unless otherwise required by Federal Regulation. In this case the agency determined that the appellant had provoked her own discharge and therefore was subject to such a *sanction.* The record, however, clearly establishes that during the period in which appellant was absent from work, she was under emotional strain and was in the initial stages of pregnancy and did not voluntarily provoke her discharge. The agency determination to deny appellant's application is reversed; . . . ." *Matter of Shirley Miller,* Decision After Fair Hearing (N.Y. State Dept. of Social Services, March 12, 1974) (Emphasis added)[17]

Thus the State Commissioner found that Shirley Miller had been erroneously subjected to the 75 day sanction.

3. Ulysses Westbrook

Ulysses Westbrook was employed as a New York State Corrections Officer at the Albion Correctional

---

[16]Miller's motions were subsequently withdrawn.

[17]A copy of this Decision is annexed to this Brief as Appendix "A".

Facility in Albion, New York. His salary was $10,000 per year. (A.221-223,231).[18] On February 6, 1974, Westbrook was suspended from his work without pay after he was arrested on a criminal charge of assault. He later received a notice from his employer which stated that he would be dismissed from his employment. The notice alleged:

> "In Rochester, Monroe County, New York at approximately 5:50 P.M. of February 5, 1974 you struck Charles Square with a pistol and you shot him in the abdomen." (A.231).

Westbrook filed a grievance to protest his suspension without pay and dismissal. (A.232). After his suspension, Westbrook received no income; he was in debt to the attorney representing him in the criminal court proceeding; he had no money to pay his rent, buy food or to make support payments for his wife and two children. (A.223,232-233).

Westbrook applied for public assistance at the Monroe County Department of Social Services on February 22, 1974, and explained the circumstances that led to his destitution. (A.222,232,259). He was told he would have to wait 75 days from the date of his employment termination before he could receive assistance. He later received a written denial notice, dated February 26, 1974, which stated in part:

---

[18]Westbrook was 38 years of age, and he lived alone. He was formerly employed by the Armour Meat Company in Rochester, New York from 1966 until it closed in 1971. Westbrook began his work as a corrections officer at the Attica prison in 1972 and he was subsequently transferred to Albion. (A.223).

"Your application has been denied because you were suspended from employment with N.Y.S. Dept. of Corrections. *Therefore a 75-Day Sanction is invoked.*
If you believe that this action should not be taken, you may request a state fair hearing . . . If you request a fair hearing, a notice will be sent to you of the time and place of the hearing. At the hearing you, your attorney or other representative will have an opportunity to present relevant written and oral evidence to demonstrate why the action should not be taken as well as an opportunity to question any persons who appear at the hearing and present evidence against you . . . ." (A.242-243) (Emphasis added).

On March 29 and April 1, 1974, Westbrook's counsel attempted without any success to persuade the lawyer for the Commissioner of the Monroe County Department of Social Services that the 75 day sanction should not have been imposed because Westbrook did not quit his employment for the purpose of obtaining public assistance. (A.220,221-224).[19]

On April 9, 1974, the Monroe County Commissioner's counsel was notified that Westbrook would seek relief from the District Court to enjoin imposition of the 75 day sanction. (A.220). Only after the District Court issued an order to show cause, (A.218-219), "[t]he Monroe County Department of Social Services reverse[d] its decision finding Westbrook ineligible under Social Services Law §131(11) and found him

[19]On April 8, 1974, Westbrook's counsel requested an expedited fair hearing, but was told by the State Commissioner's agents that one could not even be scheduled for Westbrook until April 22, 1974. (A.236).

eligible." (A.452). The District Court then denied Westbrook's motions. (A.4.)

4. Anthony Brownlee

Anthony Brownlee, a 32 year old resident of Yonkers, New York, worked for more than one year as a foreman in charge of receiving merchandise and maintaining inventories for a plastics company, until his employment was terminated on March 2, 1973. (A.256,297,300). His employment was terminated after he allegedly failed to make an accurate report of the amount of a necessary solvent remaining in a drum, which led to a shutdown at the plastics company on February 2, 1973. (A.300).

Brownlee subsequently applied for unemployment insurance benefits at the New York State Department of Labor, but his application was denied on March 26, 1973. (A.297,302). The Labor Department notice stated in part:

"DETERMINATION: You quit your job without good cause.
REASON: This Determination is based on the following: You provoked your discharge by failing to follow orders after previous warning which resulted in production shutdown." (A.302-303).

Brownlee appealed his disqualification from receiving unemployment benefits. (A.297). While searching for new work and awaiting his Department of Labor hearing, Brownlee ran out of money with which to pay for his food and rent, and he applied for public assistance. (A.256,297,304,306). Brownlee's application

for public assistance was denied. He received a denial notice dated April 18, 1973, which stated in part:

> "*There is a 75 day sanction from the day you quit your job* before you can apply for public assistance. As per letter from N.Y. State Dept. of Labor dated 3/26/73, 'you quit your job without good cause'.
>
> If you are not satisfied with this decision you have the right to ask for a Fair Hearing. . . ." (A.304) (Emphasis added).

A Fair Hearing was requested by Brownlee but was not held until May 8, 1973, and was not decided until May 22, 1973, more than 75 days after his employment termination. (A.256,305,306).

The State Commissioner affirmed the imposition of the 75 day sanction against Brownlee by the Westchester County Department of Social Services. The decision stated:

> ". . .[18NYCRR §385.7] provides that a person who voluntarily terminates employment or reduces his earning capacity for the purpose of qualifying for assistance shall be disqualified from receiving assistance for 75 days thereafter. . . . On the credible evidence the appellant was discharged from his employment under circumstances which constitute voluntary termination of employment within the meaning of the aforecited regulation. Accordingly, the determination of the agency is proper." (A.307).[20]

---

[20]On April 25, 1973, a decision was made by an Unemployment Insurance Referee, who reached an opposite conclusion:

> "[T]he only method available to. . .[Brownlee] in checking on the amount of solvent was to sound the drum and estimate from such sound the amount of solvent in the drum. Such method is dependent to a great extent on personal judgment and is far from accurate. . . .Although there was negligence, it is held that although it is the employer's prerogative to discharge an employee if it wishes, claimant did not provoke his discharge under conditions requiring disqualification. DECISION: The initial determination is overruled." (A.301)

Brownlee's motion to intervene as a plaintiff was denied by the three-judge court as being unnecessary after the intervention of Joe Beverly, who also had been denied assistance after a "fair hearing" decision by the State Commissioner, and because the action was certified as a class action by the three-judge court. (A.574-575).

5. Ethel Reid

Ethel Reid, a resident of Yonkers, New York, was twenty-nine years of age and employed as a homemaker for a service agency until October 21, 1973. (A.257, 286). On that date Reid was told by her employer that she had been replaced because she had missed about one week of work when she went to Philadelphia on October 11, 1973 to be with her mother who was undergoing open heart surgery. (A.257,286-287).

Reid ran out of money with which to pay her rent and purchase food. (A.257,287). On October 31, 1973, she applied for public assistance at the Yonkers office of the Westchester County Department of Social Services. (A.287).

Reid was locked out of her apartment by her landlord when she could not pay her rent, and she again applied for public assistance. (A.287-288). She

received a denial notice dated November 23, 1974, which stated, in part:

> "Your application for public assistance has been denied for the following reasons:
>
> *You are sanctioned for 75 days from 10/11/73, the day you left your job.* However, you may re-apply on 12/24/73.
>
> If you are not satisifed with this decision you have the right to ask for a Fair Hearing. . . ." (A.291) (Emphasis added).

On February 8, 1974, about seventy days after her request for a "fair hearing", and after the expiration of the 75 day sanction period, the State Commissioner rendered a decision in which he relied upon the challenged regulation to affirm the imposition of the 75 day sanction. (A.257,288,292-295).[21]

Ethel Reid's motion to intervene was denied by the three-judge court in light of the intervention of the Beverlys and because the action was certified as a class action. (A.561-562,574-575).

C. Other members of the Plaintiff Class

1. Allen Phillips

Allen Phillips lived in Ossining, New York. He had a ninth grade education, was 39 years of age, and had been regularly employed "all [his] life" as an unskilled

[21] Eventually, Reid was rehired by her former employer, and on December 21, 1973, she again began receiving a salary of $48.40 per week. (A.289).

laborer until November, 1973, when he injured his hand and could not perform his work as a dishwasher. (A.262,310). Phillips received public assistance from about November, 1973 to January, 1974, when he found new work as a dishwasher at the Mayflower Hotel in Manhattan. (A.262,310).[22]

Phillips asked the Westchester County Department of Social Services to close his case because he had found work. (A.262,310). However, after about a week, Phillips was discharged by his employer because he reported late for work one day after missing his train. (A.262,310). Phillips again sought, but did not find, new employment. (A.311). He applied for public assistance on or about February 1, 1974. (A.311). He was subjected to the 75 day statutory sanction when he applied, and he much later received a written denial notice dated March 8, 1975, which stated:

> "Your application for public assistance has been denied for the following reasons:
>
> As it was explained to you at our last meeting of approximately February 21, 1974, you provoked your own discharge. *This means that you may not re-apply until 75 days from the date you were discharged.*
>
> If you are not satisfied with this decision you have the right to ask for a Fair Hearing. . . ." (A.312) (Emphasis added).

[22] While receiving public assistance Phillips complied with the requirements of Section 131(4) of the New York Social Services Law that he be available for work, report bi-monthly for work referrals, public service employment and actively seek employment. Phillips found the dishwasher job at the Mayflower Hotel on his own initiative. (A.310).

A hearing that had been requested on February 22, 1974 was scheduled for Phillips on March 12, 1974. However, Phillips was unable to attend his hearing because he had been arrested and imprisoned for an alleged shoplifting offense. (A.261, 311). His hearing was rescheduled and held on April 4, 1974. A Decision After Fair Hearing was rendered by the State Commissioner on April 29, 1975, in which he concluded that the 75 day sanction had been unlawfully imposed against Phillips. The decision stated, in part:

> "(4)The appellant was only late on one occasion when he missed his train. Section 385.7(a)(1) of the Regulations provides for the discontinuance or denial of assistance where there is a voluntary termination of employment for the purpose of qualifying for public assistance. The record establishes that the appellant did not provoke his discharge for the purpose of qualifying for public assistance. DECISION: The determination of the agency is not and cannot be affirmed." *Matter of Allen Phillips*, Fair Hearing Decision, (New York State Department of Social Services, April 29, 1974).[23]

While Phillips awaited his favorable decision, he could not afford to pay for the transportation he needed to seek new employment, and he was unable to pay for food and rent. (A.262,311).

2. Pat Scarfone

Pat Scarfone, 38 years of age, lived alone, was unemployed and was destitute when he applied for

[23]The decision is annexed to this brief as Appendix "B".

public assistance in Mount Vernon, New York on December 3, 1973. (A.260-261,313,319). He initially received a grant of Home Relief assistance. (A.313, 316,320). Scarfone obtained employment at the American Technical Machinery Corporation on December 10, 1973, for ninety dollars ($90.00) per week plus overtime pay. (A.320).[24]

Two days later, and before receiving his first paycheck, Scarfone was discharged from his employment because he did not operate a machine to the satisfaction of his employer. (A.260,313,320). Scarfone returned to the Department of Social Services for assistance. He received a notice dated December 12, 1973, which stated, in part:

> "Your application for public assistance has been denied for the following reasons:
>
> You were fired from your job due to the fact that you didn't follow instructions. Therefore you are not eligible for public assistance for 75 days. Since you were receiving aid up until 12/31/73, you are not eligible for PA until 3/14/74. If you are not satisified with this decision you have the right to ask for a fair hearing. . . ." (A.260,313,316).

A hearing was requested for Scarfone on December 13, 1973, but it was not decided by the State

[24]The minimum wage allowed by law in 1973 in New York was $1.85 per hour, or $74.00 for a 40 hour work week. In 1974, it was raised to $2.10 per hour, or $84.00 per week, and in 1976, it will be raised to $2.30 per hour, or $92.00 per *week*. *N.Y. Labor Law*, §652(d) (e) (f). (McKinney Supp. 1974). During the same time period, the basic welfare grant for all non-shelter needs of single persons like Scarfone was raised from $74.00 per *month* to its current level of $94.00 per *month*. *N.Y. Social Services Law*, §131-a (McKinney Supp. 1974).

Commissioner until February 20, 1974, 50 days after Scarfone was sanctioned. (A.260-261, 314,317).

In his decision after Scarfone's hearing, the State Commissioner held that the 75 day sanction had been erroneously imposed by his Westchester agents. The decision stated, in part:

> "[Scarfone] was put to work operating a machine and was discharged because of his lack of experience. . . .
>
> [T]he record establishes that the appellant was discharged because of his inability to perform the work to the satisfaction of the employer and did not voluntarily terminate the job. . .The determination of the agency is not and cannot be affirmed." (A.319-321).

While awaiting his fair hearing decision, Scarfone was unable to afford the cost of food and rent, and it became necessary for him to leave his apartment in Mount Vernon because he could not pay his rent. (A.261,314-315).[25]

3. Terry Yant

Terry Yant was 20 years old when he was released after eighteen months imprisonment at the Coxsackie

[25]Scarfone said, "I ran out of money and I was unable to pay for my rent or buy food. I had to resort to asking people if they could help me by giving me enough money for food, rent and other necessities." (A.314). Alms-seeking has been strictly regulated in New York since at least 1824, when begging by unlicensed individuals was made a crime. *See* N.Y.L. 1824,c.331 ("An Act to Provide for the Establishment of County Poor Houses"). See also, *N.Y.Penal Law*, §240.35 (1), which makes public begging an offense.

Correctional Facility on October 21, 1974. (A.587). On November 4, 1974, he was hired as a packager for Candy Lane industries, a position which required lifting and moving heavy cartons. (A.587).

Two days after being hired, Yant quit his job "because it put too much strain on a hernia condition for which [he] had major surgery in June 1973, and which continue[d] to limit [his] activities", and because of his "hope that [he] would soon be placed in a trade school with Hudson Valley Opportunities Industrialization Center." (A.588).

On November 22, 1974, Yant was denied public assistance by the Dutchess County Department of Social Services. His denial notice dated November 2, 1974, stated, in part:

> "Your application for Public Assistance Eff. 11/22/74 under the provisions of the Social Welfare Law, has been thoroughly investigated and the facts given careful consideration. Your application for this form of assistance has been denied for the following reasons:
>
> You voluntarily terminated your employment at Candy Lane." (A.588,590).

Yant again requested public assistance on December 4, 1974, and he received a second denial notice which stated as the reason for denial, "Quit job." (A.588, 591).[26]

[26]Yant and the six members of the plaintiff class discussed *infra* were summarily sanctioned for quitting their jobs *after* the State Commissioner allegedly "took steps to prevent misapplication" of the 75 day sanction by local agencies. (Jurisdictional Statement, p.21). See, "Guidelines Useful for Ascertaining Whether the Termination of Employment is for the Purpose of Qualifying for Public Assistance" (A.454-455).

Yant obtained public assistance for the time he had been disqualified pursuant to the post-judgment order of the District Court made after a hearing on plaintiffs' motion for contempt. (A.6,690). *See* Appendix "C".

4. Gladys Hart

Gladys Hart was 31 years old and had been employed as a domestic helper for two and one half years, until she had an argument with her employer and quit her job on October 14, 1974. (A.592). She was unable to pay her rent in November, 1974. She applied for public assistance at defendant's Poughkeepsie office on November 14, 1974. (A.593,594). The Dutchess County Department of Social Services denied her request, giving the following reason in its notice:

> "Due to quitting your job on 10/14/74, you are ineligible until December 17, 1974." (A.595).

Hart received assistance pursuant to the post-judgment order issued by the District Court on December 19, 1974, (A.6,690). *See* Appendix "C".

5. Lowell Swanson

Lowell Swanson lived in Stormville, New York, was 30 years old and was employed as a bookkeeper for a blacksmith shop in Beacon, New York. When he learned that his employer was engaging in what Swanson thought to be dishonest and illegal payroll practices, he refused to cooperate and, after an argument with his employer, he quit his job on November 6, 1974. (A.638).

Swanson sought but did not immediately find new employment. (A.640).[27] On November 21, 1974, he was without any funds, and he applied for public assistance at defendant's Poughkeepsie office. (A.638-640). Swanson received a denial notice after the District Court issued its November 11, 1974 decision and injunction, which stated, in part:

> "*You terminated your employment at L&A Blacksmith of your own choice and this makes you ineligible for assistance for 75 days.*
>
> We enclose a printed folder for the purpose of informing you of the provisions of the Social Welfare Law and of your rights thereunder."[28] (A.641) (Emphasis added).

Swanson received assistance pursuant to the post-judgment order of the District Court.

6. Barbara Mankes

Barbara Mankes was 29 years old and employed as a waitress at the Four Corners Diner in Beacon, New York, until her employment was terminated without explanation by her employer on November 26, 1974. (A.633).

Unemployed and without any funds, Mankes requested public assistance on November 28, 1974. (A.633). Her application was initially accepted, but

---

[27] On December 3, 1974, Swanson found a temporary part-time job selling Christmas trees. (A.640).

[28] "Helping People to Help Themselves", an informational pamphlet of the New York Department of Social Services referred to in the notice, describes available benefits, work rules, eligibility conditions, and "fair hearing" rights. (A.340-372).

was then reconsidered and rejected. (A.633-634). She received a discontinuance letter which stated, in part:

> "NOTICE OF INTENT TO DISCONTINUE PUBLIC ASSISTANCE
>
> This is to advise you that this Department intends to DISCONTINUE your public assistance grant on December 31, 1974, for the following reasons:
>
> *You caused the termination of your job at the 4 Corners Diner. You are ineligible for public assistance for 75 days from the date of your termination (12/1/74).* You may re-apply for assistance at the end of 75 days." (A.636-637) (Emphasis added).

The threatened imposition of the 75 day sanction against Mankes was abandoned after the District Court entered its post-judgment order of December 19, 1974.

7. John Hepler, James Maine and Sherry Murphy

John Hepler, James Maine and Sherry Murphy, all residents of Tompkins County, New York, were denied public assistance due to enforcement of the statutory presumption after the decision of the three-judge court. (A.643,646,649,652,655). A volunteer worker at a storefront community service agency attempted without success to dissuade defendant's Tompkins County agents from sanctioning Mr. Hepler. (A.642,646).[29]

---

[29] A letter from the local agency to the volunteer worker stated:

> "Tompkins County Department of Social Services has not received notification from the New York Department of Social Services in Albany regarding a change in regulation 385.7...since *the 75 day penalty* has been deemed unconstitutional by a three-judge panel....
>
> Mr. Diamente [employment specialist of the Department of Social Services] directed Ms. Rosenberger [Welfare employment representative] to continue applying 75 day and 30 day *penalties*, when applicable, until an administrative letter is sent to the Tompkins County Department from Albany to do otherwise...."
> (A.646) (Emphasis added).

After the three-judge court entered its final judgment, and after the post-judgment order of December 19, 1974, Hepler, Maine and Murphy were no longer subjected to the enforcement of the presumption and the 75 day sanction. See Appendix "C" to this brief.

PROCEEDINGS BELOW

Plaintiff Milne commenced a class action on December 19, 1973, pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343(3), in the United States District Court for the Southern District of New York. (A. 1). In the course of numerous intervention proceedings, Douglas Streeter, Robert Lee and Joe, Willie, Odell, and John Beverly were granted leave to intervene as plaintiffs. (A.200-201, 214-215). On February 20, 1974, the single district court (Wyatt, D.J.) requested the convening of a three-judge Court pursuant to 28 U.S.C. §§2281 and 2284 to hear and determine plaintiffs' claims for injunctive and declaratory relief against the enforcement of *New York Social Services Law*, §131(11) (McKinney Supp, 1974). (A.100-103).

Plaintiffs' motions for summary judgment and for a class action determination and defendants' motion for judgment on the pleadings or for summary judgment were heard by the three-judge court on May 10, 1974.

(A. 530-562). Plaintiffs sought summary judgment for declaratory and injunctive relief against the State Commissioner on the grounds that *New York Social Services Law*, §131(11) and 18 N.Y.C.R.R. §387.5 on their face and as applied to plaintiffs violate the Fourteenth Amendment to the United States Constitution. (A. 245).

Plaintiffs' motion for summary judgment was supported by numerous affidavits of persons who had been sanctioned under the challenged statute, and by governmental and other studies and reports which show that poor people and welfare recipients in general have the same work ethic as other persons, and that they generally do not leave their jobs for the specific purpose of qualifying for public assistance. (A. 327-438). Defendant State Commissioner did not offer into evidence or submit any studies or reports that refuted plaintiffs' evidence and he did not refer to any studies, reports or legislative proceedings which showed that people in the plaintiff class are likely to have terminated their employment for the purpose of qualifying for Home Relief assistance.

By decision dated November 11, 1974, the three-judge court (Oakes, C.J., Wyatt, D.J., Bonsal, D.J.) unanimously held that *New York Social Services Law*, §131(11) on its face violates the Due Process Clause because "there is an insufficient connection between the known fact, that is, application for public assistance within 75 days of an applicant's termination of employment, and the fact presumed by the statute, that is, that the applicant terminated his employment for the purpose of qualifying for public assistance." (A. 569). The court thus granted plaintiffs' motion for summary judgment and denied defendant's motions.

In reaching its conclusion, the three-judge court found that it is improbable that people quit their jobs for the specific purpose of qualifying for the low amount of Home Relief assistance. The court relied upon the stringent Work Rules that recipients of public assistance in New York must comply with, the numerous other reasons that a person is more likely to have for leaving his job, and the available empirical data substantiating that poor persons are unlikely to leave their jobs to qualify for public assistance. (A. 569-571, 573). While the court found it unnecessary to rule on plaintiffs' claim that they were denied a fair opportunity to rebut the statutory presumption, it noted that "[q]uite obviously, a determination of whether the statutory rebuttable presumption has been rebutted is totally meaningless when it occurs after the 75 day waiting period." (A. 577)

The three-judge court also found that the action is a proper class action under Rule 23(b)(2) of the Federal Rules of Civil Procedure, (A. 574), certified the class (A. 579-580), and granted declaratory and injunctive relief in favor of the class. (A. 581-582).[30]

A contempt proceeding was held by the district court on December 19, 1974. (A. 661-698). This proceeding was brought on behalf of several persons who were denied assistance as a result of the continued enforcement of the statutory presumption after the ruling of the three-judge court. (A. 633-656). The single district judge granted additional relief to insure

[30]The three-judge court also denied two motions to intervene as unnecessary in view of the granting of prior motions to intervene and class action status. (A. 575)

compliance by the State Commissioner with the decision of the three-judge court. (A.7, 690).

To comply with the decision and judgment of the three-judge court, a Deputy Commissioner issued an Administrative Letter to the local commissioners requiring that the imposition of the sanctions be made only "on the basis of fact." (A. 631 632) The Administrative Letter explained that "This means that you [i.e., the caseworker] are to make a finding that a person who quits his job and applies for. . .HR within 75 days thereof has *in fact* quit his employment for the purpose of qualifying for such assistance. . . ." (A. 632) (Emphasis in original).

A second Administrative Letter stated, in part:

> "You are not to deny [Home Relief assistance] . . . unless you find from all available evidence as a *fact* that the applicant. . .has quit his or her employment for the purpose of qualifying for assistance. . . ." N.Y.State Department of Social Services Administrative Letter 74 ADM-186, Dec. 24, 1974. (Emphasis in original).[31]

On January 10, 1975, defendant filed a notice of appeal to this Court from the judgment of the three-judge court. (A. 701-704) On June 30, 1975, this Court noted probable jurisdiction of the appeal.

SUMMARY OF ARGUMENT

I.

New York Social Services Law, §131(11) provides that every person who voluntarily terminated employ-

[31] A copy of Administrative Letter 74 ADM-186 is annexed to this brief as Appendix "C".

ment within seventy-five days of application for public assistance is "deemed to have voluntarily terminated his employment. . .for the purpose of qualifying for such assistance. . .in the absence of evidence to the contrary supplied by such person." On the basis of this statutory presumption, defendant and his agents imposed sanctions of seventy-five day denials of Home Relief assistance against the plaintiffs.

This presumption violates the Due Process Clause because there is no "rational connection between the fact proved and the fact presumed." *Mobile, J. & K.C.R.R. v. Turnipseed,* 219 U.S. 35, 43 (1910). The presumption that employment termination was for the specific purpose of qualifying for public assistance is irrational because of the numerous ordinary on-the-job and personal reasons that a person is much more likely to have for leaving his job; because it is unlikely that a person would terminate voluntarily chosen employment in order to qualify for benefits which are conditioned upon the acceptance of any available employment; and because the benefits of $3.10 per day to meet all of a person's non-shelter needs are so low that it is unlikely that people would leave their jobs for the specific purpose of obtaining them.

There are no factual reports or hearings in the legislative record to substantiate any connection between the given and the presumed facts. Nor has defendant made any showing that people in the plaintiff class are likely to leave their jobs for the specific purpose of qualifying for public assistance. The available empirical evidence consistently substantiates the facts that poor people and welfare recipients have the same work ethic as other people and that they are

very unlikely to terminate their employment for the specific purpose of qualifying for public assistance.

Of the twenty one persons whose facts were before the court below, and who were sanctioned on the basis of the statutory presumption, all were needy and were left without funds to pay for food, rent and other necessaries. The record is clear that not one of these persons *in fact* terminated employment for the purpose of qualifying for public assistance.

Defendant argues that the presumption is both superfluous and indispensable. In the court below, defendant's Executive Deputy Commissioner inexplicably swore that the decisions to sanction plaintiffs were "based on evidence, not on presumption. . . ." (A. 453). Defendant now contends in this Court that there is danger of a "chaotic result," (Brief for Appellant, p.31), if decisions to impose the sanctions are based upon a finding "from all available evidence as a fact that [a person]. . .quit his employment for the purpose of qualifying for public assistance," (Appendix "C"). Defendant should not now be heard to complain in this Court of a judgment that only requires him to put into practice what he represented to the three-judge court as already being his policy.

II

The statutory presumption is rebuttable on its face. But as enforced by defendant, the presumption operated to deny plaintiffs due process of law because they were not afforded a "fair opportunity" to rebut it. *Adler v. Board of Education*, 342 U.S. 485, 495

(1952); *Western & A.R.R. v. Henderson*, 279 U.S. 639, 642 (1929); *Mobile, J. & K.C.R.R. v. Turnipseed*, 219 U.S. 35, 43 (1910).

At the time they sought assistance, plaintiffs were not afforded any opportunity to rebut the presumption and indeed were not even informed of its existence. Rather, plaintiffs were the victims of "reflexive" impositions of the statutory sanctions. *Owens v. Roberts*, 377 F. Supp. 45, 52 (M.D. Fla. 1974) (three-judge court).

The only "opportunity" to rebut the presumption was at a State "fair hearing." *N.Y. Social Services Law*, §166 (McKinney Supp. 1974); 18 N.Y.C.R.R. Part 358. The timing of the State fair hearing procedure, however, deprived plaintiffs of a fair opportunity to rebut the presumption. The State Commissioner has up to ninety days from the date of hearing request to render a fair hearing decision. 18 N.Y.C.R.R. §358.18. Persons sanctioned pursuant to the statutory presumption thus had no opportunity to rebut it prior to the imposition of the sanction and generally during the entire seventy-five day sanction period.

A fair opportunity to rebut the presumption requires that defendant hold and determine fair hearings prior to imposition of sanctions. When the severe harm to the plaintiffs and the risk that sanctions will be erroneously imposed on the basis of a presumed subjective purpose are balanced against any administrative inconvenience, due process requires that fair hearings be held and determined prior to the imposition of the sanction. *Goldberg v. Kelly*, 397 U.S. 254 (1970).

Because defendant failed to afford plaintiffs a hearing and determination prior to the imposition of the sanctions and generally during the entire seventy-five day sanction period, the statutory rebuttable presumption operated as a conclusive presumption. Where important interests are at stake, the State may not conclusively presume facts that are "not necessarily nor universally true in fact," but must provide a party with a meaningful opportunity to show the actual facts. *Vlandis v. Kline*, 412 U.S. 441,452 (1973). *Accord, Cleveland Board of Education v. LaFleur*, 414 U.S. 632 (1974); *United States Department of Agriculture v. Murry*, 413 U.S. 528 (1973); *Stanley v. Illinois*, 405 U.S. 645 (1972).

III

The New York State Department of Social Services purports to make a careful investigation, evaluation and determination of the actual facts concerning each applicant's eligibility for public assistance. 18 N.Y.C.R.R. Parts 351 and 352. Seventy-five day sanctions were imposed against the plaintiffs, however, not on the basis of actual facts, but on the basis of the assumption that they terminated employment for the specific purpose of qualifying for public assistance. The denial of assistance to needy persons on the basis of this presumption is arbitrary and irrational, in violation of the Equal Protection Clause. *Owens v. Roberts*, 377 F. Supp. 45, 51 (M.D. Fla. 1974) (three-judge court).

Where a governmental program generally makes case by case fact findings to support its determinations, it

cannot, consistent with the Equal Protection Clause, arbitrarily and irrationally single out one class of persons and deny them a fair opportunity to show the actual facts. *Jimenez v. Weinberger*, 417 U.S. 628 (1974); *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973); *Stanley v. Illinois*, 405 U.S. 645 (1972). Indeed, the State spites its own purposes in carrying out its public assistance programs when it denies assistance to needy persons who did not in fact leave their jobs in order to qualify for assistance. *Goldberg v. Kelly*, 397 U.S. 254, 264-265 (1970). The State's "mere objective" of eliminating a timely and meaningful fact finding procedure is "the very kind of arbitrary legislative choice" forbidden by the Equal Protection Clause. *Reed v. Reed*, 404 U.S. 71, 76 (1971).

That there is no legitimate state interest to support the use of the presumption is made clear by the inconsistent positions taken in the Brief for Appellant. At one point, the State Commissioner argues that the presumption is necessary because otherwise "it would be virtually impossible" for the agency to determine why a person left his job. Brief for Appellant, p. 30. On the other hand defendant concedes that if the district court judgment is affirmed, he will make case by case determinations of the purpose of job termination. Brief for Appellant, p. 47. (A. 632). Finally, defendant conceded in the court below that "the actual practical effect to the State is unknown at this time, the effect of the presumption as opposed to findings of fact." (A. 690).

It was thus irrational for the State to impose sanctions against persons who terminated their employ-

ment based on the assumption that they terminated their employment for the purpose of qualifying for assistance.

IV

All of the members of the plaintiff class who participated in the proceedings below were applicants for Home Relief assistance. *N.Y.Social Services Law*, §158 (McKinney Supp. 1974). Defendant represented to the court below that "there are very few, if any, persons receiving A.F.D.C. who are directly affected" by the contested statute. (A. 693). (*Accord*, A.691). Any person in the AFDC category affected by the enforcement of the contested statute would have a substantial claim that the state statutory provision conflicts with the Social Security Act. *E.g., Lewis v. Martin*, 397 U.S. 552 (1970); *King v. Smith*, 392 U.S. 309 (1968). This claim was not raised by the plaintiffs in the court below. Under these circumstances, plaintiffs agree with defendant that the class should be modified to exclude persons in the AFDC category.

ARGUMENT

I

THE PRESUMPTION THAT PLAINTIFFS TERMINATED THEIR EMPLOYMENT FOR THE PURPOSE OF QUALIFYING FOR PUBLIC ASSISTANCE VIOLATES THE DUE PROCESS CLAUSE BECAUSE THERE IS NO RATIONAL CONNECTION BETWEEN THE GIVEN FACTS AND THE FACT PRESUMED BY THE STATUTE.

The plaintiffs are individuals who requested public assistance in order to meet their needs for food, shelter and other necessities. They were disqualified from receiving any Home Relief assistance by the defendant State Commissioner and his agents due to the enforcement of the presumption in the second sentence of Section 131(11) of the New York Social Services Law and its regulatory counterpart, 18 N.Y.C.R.R. §385.7(b).

The first sentence of Section 131(11) disqualifies for two and one-half months (75 days) any person who voluntarily terminates his employment "*for the purpose of qualifying for home relief. . .*" *N.Y.Social Services Law*, §131(11) (McKinney Supp. 1974) (emphasis added). The validity of this provision is not in issue. *Milne v. Berman*, 384 F. Supp. 206, 208, 212 (S.D.N.Y. 1974) (three-judge court).

The second sentence of Section 131(11) contains the only provision that is in issue. It provides that "any person who applies for home relief. . .within seventy-five days after voluntarily terminating his employment *. . .shall, . . .be deemed to have voluntarily terminated*

*his employment. . .for the purpose of qualifying for such assistance, . . .*in the absence of evidence to the contrary supplied by such person." (Emphasis added).[32]

Thus, as initially described by defendant, "the statute creates a rebuttable presumption that if there is a voluntary termination of employment and an application for public assistance within seventy-five days, *the* purpose of *that* termination was to receive public assistance." Brief for Appellant, p. 5. (Emphasis added). *Accord, e.g.*, Jurisdictional Statement, p. 6; A. 457, 462, 617, 632). Defendant, however, equivocates in describing the presumption at other places in his brief. For example, at times, defendant refers to a person who "intended to apply for assistance when he quit his job," Brief for Appellant, p. 29, and to a person who "had that . . . source of income in mind [when he quit]." *Id.* at p. 30. *Contra, e.g., id.* at p. 5; Jurisdictional Statement, p. 6. But a person who terminated employ-

[32]The same presumption is contained in a regulation of the New York State Department of Social Services promulgated by the State Commissioner. 18 N.Y.C.R.R. §385.7(b). An explanation of the presumption to local caseworkers, relied upon by defendant at pages 45 and 46 of his Brief, explains that "this regulation [18 N.Y.C.R.R. §385.7] is based on the assumption [of Section 131(11)] that. . .applicants. . .have quit their jobs *specifically for the purpose of qualifying for. . .assistance.*" New York City Human Resources Administration, Income Maintenance Directive No. 14, January 27, 1972. (A. 457). (Emphasis added). See *Gaddis v. Wyman*, 304 F. Supp. 717, 721 (S.D.N.Y. 1969) (three-judge court), *aff'd sub nom Wyman v. Bowens*, 397 U.S. 49 (1970) (travel presumed to be for sole purpose of qualifying for welfare benefits). *See also*, 18 N.Y.C.R.R. §370.4(h) (transfer of property presumed to be for the purpose of qualifying for assistance).

ment for an everyday ordinary purpose who knew of or had "in mind" the existence of the State's public assistance program, or even a person who intended to seek public assistance if he later finds himself with no other means of support, did not terminate employment "specifically for the purpose of qualifying for. . . . assistance." (A. 457). Elsewhere in his brief, defendant again reverts to the statutory language, citing administrative guidelines that properly describe the specific disqualifying purpose, "giving examples of reasons for terminating employment which, if proven, would demonstrate a purpose other than qualifying for assistance." Brief for Appellant, p. 46-7.

When the State Commissioner's local agents determined that plaintiffs voluntarily left their employment, they presumed that plaintiffs had done so for the purpose of qualifying for Home Relief assistance, and the seventy-five day sanctions were summarily imposed. In cases where hearings were subsequently held, the State Commissioner relied upon the statutory presumption to uphold the locally imposed sanctions. For example, in erroneously concluding that plaintiff Joe Beverly terminated his employment "for the purpose of qualifying for home relief," the State Commissioner expressly relied upon the presumption and upheld the sanction, even though "clearly [Beverly] attempted to show that he terminated his employment for another reason. . . ." (A. 462). In addition, the sanctions imposed against class members Reid and Brownlee were upheld by the State Commissioner on the basis of the statutory presumption, even though it is clear from the record that they also did not leave their jobs for the purpose of qualifying for Home Relief assistance. (A. 294-295; 306-307). There is thus no basis in the record

for defendant's contention that rebutting the presumption is "an easy matter." Brief for Appellant, p. 25.[33]

Plaintiffs contend that the three-judge court properly held that the statutory presumption violates the Due Process Clause because there is no rational connection between the given fact, voluntary employment termination within the two and one-half months preceding a person's application for public assistance, and the fact presumed by statute, that the person terminated his employment for the purpose of qualifying for home relief. *Milne v. Berman*, 384 F. Supp. 206, 210 (S.D.N.Y. 1974). The three-judge court unanimously found that the presumed fact does not rationally follow from the given fact because of the high probability that plaintiffs terminated their employment for ordinary purposes and not for the purpose of qualifying for Home Relief assistance, *Id.* at 210-211; because Home Relief assistance is not provided unless a person initially and continually complies with the stringent New York "Work Rules," *Id.* at 210, n. 3; because Home Relief allowances are so low it is unlikely that persons would leave their employment for the purpose of qualifying for them, *Id.* at 210; and because the available evidence

[33]Plaintiffs were faced with the burden of proving a negative in order to rebut the presumption. Such a task "is always a difficult burden to meet," even for those with legal training. *Laskey Bros. of W. Va. v. Warner Bros. Pictures*, 224 F. 2d 824, 827 (2d Cir. 1955), *cert. denied* 350 U.S. 932 (1956). *Accord, Silver Chrysler Plymouth, Inc. v. Chrysler Mot. Corp.*, 518 F. 2d 751, 754 (2d Cir. 1975). *See generally, Speiser v. Randall*, 357 U.S. 513, 520-521 (1958) ("the procedures by which the facts of the case are determined assume an importance fully as great as the substantive rule of law to be applied").

In addition, defendant concedes that the presumption was "improperly applied." Brief for Appellant, p.12. For these persons, rebuttal of the presumption was no "easy matter."

shows that poor people and welfare recipients have the same work ethic as other people and do not terminate their jobs for the specific purpose of qualifying for public assistance.

In reaching its decision, the three-judge court applied the standard for determining the constitutionality of statutory rebuttable presumptions established by this Court in *Mobile, J. &K.C.R.R. v. Turnipseed*, 219 U.S. 35 (1910). In *Mobile*, this Court held that the Due Process Clause requires a "rational connection between the fact proved and the fact presumed. . .[T]he inferrence of one from the other shall not be so unreasonable as to be a purely arbitrary mandate." *Mobile, J. &K.C.R.R. v. Turnipseed*, 219 U.S. 35, 43 (1910).[34]

[34]The *Mobile* rational connection standard has deep roots in early decisions of this Court. In civil cases decided long before *Mobile* this Court held that for a presumption of fact to be fair, "the presumed fact must have an immediate connection with or relation to the established fact from which it is inferred. . . .The only presumptions of fact which the law recognizes are immediate inferences from facts proved." *Manning v. John Hancock Mutual Life Ins. Co.*, 100 U.S. 693, 698 (1879).

A presumption must not "give a new character to that which is seen to be defective." *French v. Edwards*, 80 U.S. (13 Wall.) 506, 514 (1872). A presumed fact is one which "most usually accompanies" the proven fact. *Home Insurance Company v. Weide*, 78 U.S. (11 Wall.) 438, 440 (1871).

A presumption must be "compatible with the conduct of those to whom it may be sought to apply." *Fresh v. Gilson*, 41 U.S. (16 Pet.) 327, 331 (1842). A presumed fact is "the natural result or necessary accompaniment" of the proven facts. *Bank of United States v. Dandridge*, 25 U.S. (12 Wheat.) 64, 69 (1827).

Presumptions "are founded upon the consideration, that the facts are such as could not, according to the ordinary course of

In *Atlantic Coast Line R.R. v. Ford*, 287 U.S. 502 (1933), the Court distinguished the presumption of negligence upheld in *Mobile* from the one found to lack a rational connection in *Western & A.R.R. v. Henderson*, 270 U.S. 639, 642 (1929). The presumption of the railroad's negligence in *Western* arose merely from proof of a grade crossing *collision* with an automobile, while the *Mobile* presumption arose from proof of a *derailment. Atlantic Coast Line R.R. v. Ford, supra* at 508.[35]

In *Tot v. United States*, 319 U.S. 463, 467 (1943) this Court unanimously held that the *Mobile* rational connection standard is the "controlling" test to

---

human affairs, occur unless [the presumed fact also exists] . . . ." *Ricard v. Williams*, 20 U.S. (7 Wheat.) 59, 109 (1822).

The reasoning of these cases determining the fairness of judicially created presumptions is also applicable to the analysis of statutory presumptions. *See Barnes v. United States*, 412 U.S. 837, 845 n. 8 (1973).

[35]The Court said: "[I]t was fundamentally arbitrary, in that the mere fact of collision between a railway train and a vehicle at a crossing created a presumption that the accident was caused by the negligence of the company. The mere fact of such collision [in *Western*], we said, 'furnishes no basis for any inference as to whether the accident was caused by the railway company or of the traveller on the highway or of both or without the fault of anyone. Reasoning does not lead from the occurrence back to its cause.'" *Atlantic Coast Line R.R. v. Ford, supra* at 508. *Cf., Mobile, J. & K.C.R.R. v. Turnipseed*, 219 U.S. 35, 44 (1910) ("It is not an unreasonable inference that a derailment. . .is due to some negligence. . . .")

determine the validity of a statutory rebuttable presumption.[36] The Court in *Tot* concluded:

> "Under our decisions, a statutory presumtpion cannot be sustained if there be no rational connection between the fact proved and the ultimate fact presumed, if the inference of the one from proof of the other is arbitrary because of lack of connection between the two in common experience. . . . [W]here the inference is so strained as not to have a reasonable relation to the circumstances of life as we know them it is not competent for the legislature to create it as a rule governing the procedure of courts." *Tot v. United States* 319 U.S. 463, 467-468 (1943).

The *Mobile-Tot* rational connection standard has been applied consistently in the subsequent civil and criminal cases in which this Court has determined the

---

[36]Before *Tot* was decided, this Court repeatedly invoked and applied the rational connection standard of *Mobile*, but with some variations in emphasis. *See, e.g., Morrison v. California*, 291 U.S. 82, 90 (1934) ("What is proved must be so related to what is inferred in the case of a true presumption as to be at least a warning signal according to the teachings of experience"); *Atlantic Coast Line R.R. v. Ford*, 287 U.S. 502, 508 (1933); *Bandini Petroleum Co. v. Superior Court*, 284 U.S. 8, 19 (1931) (a "manifest connection"); *Western & A. R.R. v. Henderson*, 279 U.S. 639, 642 (1929); *Manley v. Georgia*, 279 U.S. 1, 6 (1929); *Yee Hem v. United States*, 268 U.S. 178, 183 (1925); *Hawes v. State of Georgia*, 258 U.S. 1, 4 (1922) ("Undoubtedly there must be a relation between the two facts. . . .[t]hat is, if one may evidence the other, there must be connection between them, a requirement that reasoning insists on. . . ."); *Greer v. United States*, 245 U.S. 559, 561 (1918) ("common experience shows the [presumed] fact to be so generally true that courts may notice its truth"); *McFarland v. American Sugar Refining Co.*, 241 U.S. 79, 86 (1916); *Bailey v. Alabama* 219 U.S. 219, 238-239 (1911).

constitutionality of rebuttable presumptions. *Barnes v. United States*, 412 U.S. 837 (1973); *Turner v. United States*, 396 U.S. 398 (1970); *Leary v. United States*, 395 U.S. 6 (1969); *United States v. Romano*, 382 U.S. 136 (1965); *United States v. Gainey*, 380 U.S. 63 (1965); *Adler v. Board of Education*, 342 U.S. 485, 494 (1952). *See also, New York Times Co. v. Sullivan*, 376 U.S. 254, 284 (1964); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 215-220 (1963) (Stewart and White, J.J., dissenting); *Speiser v. Randall*, 357 U.S. 513, 537 (1958). In both *Leary* and *Romano*, the Court emphasized that the rational connection test employed in *Tot* was the same standard originally established in *Mobile*, "a civil case." *Leary v. United States, supra* at 33; *United States v. Romano, supra* at 139. The Court has not found it necessary to decide whether a standard stricter than the *Mobile* rational connection test is required in criminal cases. *Barnes v. United States, supra* at 843, 846; *Turner v. United States, supra* at 416; *Leary v. United States, supra* at 36 n. 64. *Accord, Mullaney v. Wilbur*, 95 S. Ct. 1881, 1891 n. 31 (1975); *United States v. Black*, 512 F. 2d 864, 869 9th Cir. 1975). It is thus clear that the constitutionality of the presumption in the case at bar is measured by the *Mobile-Tot* rational connection standard.

There is no rational connection unless "the presumed fact is more likely than not to flow from the proven fact on which it is made to depend." *Leary v. United States*, 395 U.S. 6, 36 (1969). *Accord, Barnes v. United States*, 412 U.S. 837, 842-3 (1973); *Turner v. United States*, 396 U.S. 398, 405 (1970). *See Greer v. United States*, 245 U.S. 559, 561 (1918) (A presumption must

be "generally true"); *Home Insurance Co. v. Weide*, 78 U.S. (11 Wall.) 438, 440 (1871) (The presumed fact "most usually accompanies" the proven fact).[37]

To determine whether a rational connection exists, this Court has relied upon "the generality of experience", *Adler v. Board of Education*, 342 U.S. 485, 493 (1952),[38] "common sense", *Turner v. United States*, 396 U.S. 398, 417 (1970),[39] "the circumstances of life as we know them", *Tot v. United States*, 319 U.S. 463, 468 (1943),[40] "the available, pertinent data," and "the available evidence". *Leary v. United States*, 395 U.S. 6, 38, 46 (1969).[41]

---

[37]The "more likely than not" requirement for rational presumptions coincides with the rule that a "finding of fact" in civil cases is a determination "that its existence is more probable than its non-existence." Model Code of Evidence, Rule 1(5) (1942). Unless a presumed fact "more likely than not" exists, a "finding" of the fact presumed is irrational and arbitrary. *Mobile, J. & K. C. R.R. v. Turnipseed*, 219 U.S. 35, 43-44 (1910).

[38]*Accord, Barnes v. United States*, 412 U.S. 837, 844, 845 (1973) ("accumulated common experience" and "common knowledge"); *Tot v. United States*, 319 U.S. 463, 468, 471 (1943) ("common experience"); *McFarland v. American Sugar Refining Co.*, 241 U.S. 79, 86 (1916) ("a relation in experience to general facts").

[39]*Accord, Barnes v. United States, supra* at 845 ("common sense and experience"); *Leary v. United States, supra* at 46 (common sense).

[40]*Accord, Barnes v. United States, supra* at 844-845; *Ricard v. Williams*, 20 U.S. (7 Wheat.) 59, 109 (1822) ("the ordinary course of human affairs").

[41]*Accord, Turner v. United States, supra*, 409-418; *United States v. Gainey*, 380 U.S. 63, 67 (1965). "But the test in the end is 'experience' – reality." *United States v. Adams*, 293 F. Supp. 776, 783 (S.D.N.Y 1968), cited in *Leary v. United States, supra* at 53 n. 116.

In the case at bar, the "given" facts are that an individual voluntarily terminated employment, and that within the following two and one-half months he or she applied for home relief assistance. *N.Y. Social Services Law*, §131(11) (McKinney Supp. 1974). From these facts, and nothing more, the statute presumes that the individual terminated his employment "for the purpose of qualifying for such assistance." *Id.*[42]

Thus, under the rational connection standard, the question is whether the "generality of experience", "common sense", "the circumstances of life as we know them", or the "available, pertinent data" show that it is likely that people in the plaintiff class

[42]This is a statutory "presumption of welfare abuse", *Gaddis v. Wyman*, 304 F. Supp. 713, 716 (S.D.N.Y. 1969). *See also* 18 N.Y.C.R.R. §370.4(h).

It is significant that two unanimous three-judge panels have found no factual basis to sustain similar presumptions of "bad motive" on the part of public assistance applicants. *Milne v. Berman*, 384 F. Supp. 206 at 212 (S.D.N.Y. 1974); *Owens v. Roberts*, 377 F. Supp 45, 53 (M.D. Fla. 1974) (prior transfer of property may not be presumed to be for the "fraudulent" or "malevolent" purpose of qualifying for assistance). *See also, Garcia v. Silverman*, 393 F. Supp. 590, 593 (E.D. Wis. 1975); *State ex. rel. Arteaga v. Silverman*, 56 Wisc. 2d 110, 201 N.W. 2d 538, 542 (1972). In addition, the State Commissioner "cited no case which would support the presumption. . . ." *Milne v. Berman, supra* at 210 (A. 573).

Thus the "accumulated common experience" embodied in the relevant case law, *Barnes v. United States, supra* at 844-845, is itself strong evidence that there is no factual basis to support presumptions that welfare applicants engage in wrongful behavior for the purpose of qualifying for assistance. *Cf. United States v. Romano*, 382 U.S. 136, 141 (1965).

terminated their employment not for personal, family, health, on-the-job problems or other reasons, but for the specific purpose of qualifying for Home Relief assistance.

Ordinary experience teaches that the great majority of people terminate their employment for many commonly known reasons, and that they do not terminate their employment for the purpose of qualifying for public assistance.[43] As the three-judge court said:

> "Any number of reasons for terminating employment exist - desire for advancement, problems of health, family problems, transportation problems, personality conflicts, working conditions, and perhaps simply basic discontent with a job, to mention a few." *Milne v. Berman*, 384 F. Supp. 206, 210, 211 (A. 570).[44]

[43]"One of the most valuable rights of man is to work where he pleases, and to quit one employment and go to another. . ." *Peonage Cases*, 123 F. 671 M.D. Ala. 1903. "[I]n general, the defense against oppressive hours, pay, working conditions, or treatment is the right to change employers." *Pollock v. Williams*, 332 U.S. 4, 17-18 (1944).

[44]The district court's examples of common reasons why people leave their employment coincides with the general experience of employers. According to a recent survey of personnel executives, consisting of a cross-section of both large and small companies, the causes of non-management employee turnover are "personal problems (family, transportation, poor health, etc.), . . .followed in descending order by dissatisfaction with (1) pay, (2) job opportunities, (3) supervision and (4) working conditions." Bureau of National Affairs, *Turnover and Job Satisfaction*, Survey No. 91, July, 1970, Plaintiffs' Exhibit "G". (A. 410, 420, 421).

See F. Fournies, *The Real Reasons People Quit*, American Management Society Report, October, 1969; C. Williams, *Why*

Other reasons include the hope of finding a more desirable job, a lack of skills, training or supervision for a position, discriminatory employment practices, sub-standard pay, ethical considerations, and failure to satisfy psychological needs. *See* M. Argyle, *The Social Psychology of Work*, 225-6, 245 (Pelican, 1974); Report to the Secretary of HEW, *Work In America*, 3-10 (MIT Press, 1973) (A. 327-336).[45] Any one of these ordinary reasons is far more likely to be the purpose for terminating one's employment than the purpose presumed by the statute.

For example, it is common knowledge that individuals frequently exercise a voluntary choice to resign from employment they consider to be injurious to their physical or mental health. A recent study of New York City Home Relief Applications found that 23% of the applicants had left their prior employment due to

---

Do They Quit?, 30 Administrative Management No. 10, (1969); C. Williams, *Why Workers Say 'I Quit'*, Supervisory Management, July 1968; K. Kahl, *New Light on Employee Turnover*, Supervisory Management, (April, 1969). None of these business management publications even suggests that persons actually quit jobs for the purpose of qualifying for public assistance.

[45]*See also,* Porter, et al., *Organizational Commitment, Job Satisfaction and Turnover Among Psychiatric Technicians*, 59 Journal of Applied Psychology 603-9 (Oct. 1974); Porter, *et ano., Organizational, Work and Personal Factors in Employee Turnover and Absenteeism*, 80 Psychological Bulletin 151-176 (Aug. 1973); J. Ledvinkin, *Race of Employment Interviewer and Reasons Given By Black Job Seekers For Leaving Their Jobs*, 58 Journal of Applied Psychology 362-4 (1973); Dunette, *et al., Why Do They Leave*, 50 Personnel (1973); F. Wickert, *Turnover and Employees' Feelings of Ego Involvement in the Day to Day Operation of A Company*, 4 Personnel Psychology 185-197 (1951).

illness. New York City Human Resources Administration, *Welfare Case Turnover in 1972* 62 (Preliminary Report Dec. 1973) (A. 570). *Accord*, E. Durbin, *Welfare Income and Employment*, in 1 *Labor Economics and Urban Studies* 111 (Praeger, 1969). And, in a study prepared for the United States Department of Labor, Manpower Administration, it was found that "poor health is by far the most important reason" why needy persons left their jobs. M. Ostrow and A. Dutka, *Work and Welfare in New York City* 57 (Johns Hopkins University Press 1975).[46]

Health problems, on-the-job problems, family and personal problems are far more likely reasons for job termination than a motive to qualify for assistance. As a matter of common sense and common experience, the fact that a person becomes needy and requests public assistance within two and one-half months after terminating his employment does not justify an inference that he or she terminated employment for the purpose of qualifying for public assistance. *See Garcia v. Silverman*, 393 F. Supp. 590, 593 (E.D. Wis. 1975).

Moreover, even if a person improvidently or irrationally terminated his employment and later finds himself without new work, family, friends or other

---

[46]"Verification of illness is specifically referred to by defendant as *evidence which would rebut the presumption.*" Jurisdictional Statement, p. 21. (Emphasis added). "Verified illness" is one of the "examples of reasons for quitting jobs for purposes other than qualifying for public assistance." *Guidelines Useful for Ascertaining Whether the Termination of Employment is for the Purpose of Qualifying for Public Assistance.* (A.454-455).

means of support, this does not justify an inference that he or she terminated employment for the purpose of qualifying for Home Relief assistance. The statute does not purport to disqualify persons who terminated their employment improvidently, but only whose who terminated employment for the specifically proscribed purpose.[47]

The three-judge court recognized that there are "numerous reasons why a person who terminates his employment subsequently becomes impoverished and has to resort to a request for public assistance – general economic conditions, a decline in jobs available in a particular industry, health, or failure to receive an anticipated new position." *Milne v. Berman*, 384 F. Supp. 206, 211 (S.D.N.Y. 1974) (A. 570). As stated by the President's Commission on Income Maintenance Programs:

> "Obviously, the state of the American economy and the consequent structure of opportunities at the local level can enhance or impede employability greatly.... In the absence of strong aggregate demand, *even well planned efforts to find jobs can be ineffective.* President's Commission on Income Maintenance Programs, *Report: Poverty Amid Plenty*, 26 (U.S.G.P.O. 1969) (Emphasis added).[48]

---

[47]For example, plaintiff Milne might have been better off had he disregarded his union representative's recommendation to resign, since he was ultimately cleared of misconduct charges at an unemployment insurance hearing. (A. 291).

[48]National economic policy "promotes," but does not "assure" full employment. *District 65, Wholesale Union v. Nixon*, 341 F. Supp. 1193, 1198 (S.D.N.Y. 1972). Thus, it is "impossible to base other social policies on the presumption that

In addition, the Commission found that "the major program dealing with the temporarily unemployed, but employable person is Unemployment Insurance. However, it did not provide benefits for nearly two-thirds of total unemployment in 1968 because of gaps in coverage and expiration of benefits". President's Commission on Income Maintenance Programs, *supra* at 4. And, it has been recognized that

> "low-income workers are more than usually likely not to receive unemployment insurance: Some are in uncovered industries such as local government, domestic service, and agriculture, others are new entrants into the labor force or new residents in the state, and some will have quit their last jobs or have been discharged for cause." A. Rees & H. Watts, *An Overview of the Labor Supply Results, in* J. Pechman & P. Timpane, eds., *Work Incentives and Income Guarantees* 65 (Brookings, 1975).

Defendant and his agents have set forth in their own regulations a number of reasons for employment termination that are far more likely than the presumed reason. In 18 N.Y.C.R.R. §385.6, the following reasons for terminating employment are set forth:

> "(c). . . .(2) the salary or wages was less than the minimum required by law, the conditions of employment were otherwise contrary to law, or the wages or compensation or hours or condition of work. . .are substantially less favorable to the

---

all able-bodied persons in need of income would [find new work]...." D. Moynihan, *The Politics of a Guaranteed Income* 94 (Vintage, 1973). *See Arteaga v. Silverman*, 56 Wis. 2d 110, 201 N.W. 2d 538 (1972); *Mooney v. Pickett*, 4 Cal. 3d 669, 483 P. 2d 1231, 94 Cal. Rptr. 279 (1971).

applicant. . . than those prevailing for similar work in locality;

(3) a strike, lock-out or other industrial controversy was in progress. . .;

(4) . . .such employment would either require the applicant. . .to join a company union or resign from or refrain from joining any bona fide labor organization;

(5) the job would have been hazardous to the applicant's . . . life or health, or there was an absence, if appropriate, of workmen's compensation;

(6) the place of employment was an unreasonable distance from the applicant's . . . home;

(7) transportation by public carrier or by private means between the applicant's . . . home and the place of employment was unavailable;

(8) child care plans were temporarily disrupted . . .;

(9) temporary and verified illness incapacitated the client. 18 N.Y.C.R.R. §385.6.[49]

In addition, defendant's New York City agency enumerates "[h]arassment by employee's supervisor," "discrimination because of race, sex, age or religion," "expectation of another job that did not materialize," hazardous work conditions, transportation problems, "verified illness forced resignation," and strikes, as "examples of reasons for terminating employment, which, if proven, would demonstrate a purpose other

[49]"Although [18 N.Y.C.R.R. §385.6] concerns refusal to accept employment, the examples contained therein are useful as guidelines in ascertaining whether the termination of employment was for the purpose of qualifying for public assistance." N.Y. State Department of Social Services, Administrative Letter 74 Inf.-19. (A. 454).

than qualifying for public assistance." Brief for Appellant, 47. These everyday ordinary reasons for employment termination, set forth by defendant himself, show the irrationality of the presumption.

The record shows that all of the persons whose facts were before the court below terminated their employment for ordinary reasons and that not one of these persons *in fact* terminated employment for the purpose of qualifying for Home Relief assistance.[50] Plaintiffs'

[50]For example, Roy Levee missed work when his wife was ill. (A. 38-39). Ethel Reid left town and her work to be with her mother when she underwent open-heart surgery. (A. 257, 286-287).

Pat Scarfone could not operate properly a machine he was assigned to use. (A. 320). Anthony Brownlee made a mistake in calculating the amount of necessary solvents remaining in barrels. (A. 301) Defendant's agents initially found that Scarfone and Brownlee constructively quit by provoking their discharges, thus bringing them within the scope of the presumption.

Lowell Swanson, a bookkeeper, quit after an argument with his employer arising from Swanson's refusal to engage in payroll accounting practices he considered dishonest. (A. 638).

Plaintiff Lee's employer objected to Lee's "excused and unexcused" absences after he was injured in an auto accident. (A. 71). Domestic workers Shirley Miller (A. 90), and Gladys Hart, (A. 592), had differences with their employers.

Plaintiffs Joe, Willie, John and Odell Beverly, four brothers ranging in age from 17 to 23, were evicted with their sister from their residence near the poultry farm in Yates County where they worked. (A. 150) Unable to find suitable replacement housing near their work, and without an auto, drivers' licenses or public transportation, they terminated their employment and looked for new work in the Ontario County communities where their mother, sisters and friends live. (A. 151-2). The State Commissioner "found" that Joe Beverly terminated employment for the purpose of qualifying for public assistance, (Brief for Appellant, p. 13). His decision, (A. 459-460), was based on the presumption, and is simply not supported by the record.

experience is consistent with empirical findings that "spatial isolation is a serious obstacle to employment in many rural areas [as with the Beverlys], while health problems afflict a substantial number of potential workers [as with plaintiffs Lee, Streeter, and class member Terry Yant]." B. Schiller, *Empirical Studies of Welfare Dependency: A Survey*, 8 Journal of Human Resources 19, 24 (Supp. 1973). "[T]he main sources of job dissatisfaction [for blue-collar workers] concerned work conditions, low wages, difficulty of the tasks, or long hours. . . . " M. Fried, *The World of the Urban Working Class* 164 (Harvard, 1973). These ordinary reasons are far more likely reasons for job termination than the purpose presumed by the statute.

Welfare recipients are a heterogeneous group. M. Ostow and A. Dutka, *Work and Welfare in New York City* p. X, XIV, 75 (Johns Hopkins University Press, 1975). It is an error to view the welfare population as a homogeneous group, since it is a changing group that is populated by a significant number of subgroups. *Id.* at XIV, 75. The record shows that plaintiffs had diverse backgrounds and work histories, were employed in a wide variety of jobs,[51] and left their employment and became needy for a wide variety of ordinary reasons. Nevertheless, they were all lumped together and they were all presumed to have terminated their employment for the purpose of qualifying for Home Relief assistance.

---

[51]New York City "has the largest and most diversified labor market of any city in the country." M. Ostow and A. Dutka, *Work and Welfare in New York City* pp. 50-51 (Johns Hopkins University Press, 1975).

In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Court, in rejecting the contention that a durational residency requirement is justified to "discourage those indigents who would enter the state solely to obtain larger benefits," concluded that there is no basis to presume that people are likely to come to a state for this purpose. On the contrary, this Court recognized that "the *great majority* . . . come to the state for other purposes. . . ." *Id.* at 631. (Emphasis added). Similarly, "the great majority" of persons who terminate their jobs do so "for other purposes." As this Court has recognized:

> "[T]he theory of the Elizabethan poor laws no longer fits the facts.
>
> Whatever may have been the notion then prevailing, we do not think that it will now seriously be contended that because a person is without employment and without funds he constitutes a 'moral pestilence'. *Poverty and immorality are not synonymous.*" *Edwards v. California*, 314 U.S.1, 174, 177 (1941). (Emphasis added).[52]

---

[52]Here, experience does not "teach that the evidence held to be inculpatory has at least a sinister significance." *Morrison v. California*, 291 U.S. 82, 91 (1934). *Cf. Bailey v. Alabama*, 219 U.S. 219, 236 (1911). Compare presumptions of adverse facts arising from "suspicious" or "sinister" given facts. *E.g., Barnes v. United States*, 412 U.S. 837 (1973) (possession of stolen goods); *Turner v. United States*, 396 U.S. 398 (1970) (possession of 275 envelopes of heroin); *United States v. Gainey*, 380 U.S. 63 (1965) (presence at illegal liquor still); *Adler v. Board of Regents*, 342 U.S. 485 (1952) (member of organization officially found to be subversive); *Mobile, J. & K.C.R.R. v. Turnipseed*, 219 U.S. 35 (1910) (negligence presumed from proof of injury caused by train derailment).

But see, City of New York v. Miln, 36 U.S. (11 Pet.) 102, 142-143 (1837).

The presumption that plaintiffs terminated their employment for the purpose of qualifying for Home Relief assistance is particularly irrational because compliance with all of New York's Work Rules is a prerequisite to both initial and continuing eligibility for Home Relief. See *N.Y. Social Services Law*, §131(4); 18 N.Y.C.R.R. §385.4.

The comprehensive New York Work Rules for recipients recently were summarized in *New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973):

> "[T]he Work Rules establish a presumption that certain recipients of public assistance are employable [N.Y. Social Services Law, §131(5)], and require those recipients to report every two weeks to pick up their assistance checks in person; to file every two weeks a certificate from the appropriate public employment office stating that no suitable employment opportunities are available; to report to the public employment office the result of a referral for employment; and not to fail willfully to report for suitable employment, when available. In addition to establishing a system of referral for employment in the private sector of the economy, the Work Rules permit the establishment of public works projects in New York's social service districts. Failure of 'employable' persons to participate in the operation of the Work Rules results in a loss of assistance." *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 408-409 (1973).

The Work Rules apply to all applicants, who must obtain certification from the New York State Department of Labor that no work is available *before* their eligibility for Home Relief may be established.[53] In addition, Home Relief recipients may be required to work, without compensation, on public work relief projects.[54] Section 164 of the New York Social Services Law provides:

> "[E]mployable persons receiving home relief shall be required to perform such work as shall be assigned to them by the social services official. . . . 4. Any person who refused to report for or to perform work . . . shall thereupon become ineligible for home relief. *N.Y. Social Services Law*, §164 (McKinney Supp. 1974). *See Ramsey v. Lavine*, 82 Misc.2d 322, 323 (N.Y. Sup. Ct. 1975).

As a matter of common sense, it is irrational to presume that persons would terminate their voluntarily

---

[53]The Work Rules for both applicants and recipients are well publicized in the information pamphlets of the New York State Department of Social Services, which state:

WORK PROGRAMS

> *"No employable person is eligible for public assistance unless he has first registered at the State Employment Service . . ."* N.Y. State Dept. of Social Services, "Helping People to Help Themselves." (A. 352-353). (Emphasis added).

[54]As early as the seventeenth century, New York's welfare programs required able-bodied unemployed persons to work. N. Fensterstock, *History of New York Social Legislation* XII, n. 22 in 52A McKinney N.Y. Social Services Law (1966). *See* Piven & Cloward, *Regulating the Poor: The Functions of Public Welfare* 8, 22-25 (Vintage: 1972); Feagin, *Subordinating the Poor: Welfare and American Beliefs* 20-21 (1975); Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America* 54 (Free Press: 1974). *See also*, N.Y. Laws 1824, c. 331 (V). (Solitary confinement with bread and water for any person deemed to have violated poor house work rules).

chosen present employment for the purpose of qualifying for Home Relief assistance, when as a condition for receiving such assistance a person must accept *any* job he or she is capable of performing. Thus "it is not reasonable to presume that currently employed persons would terminate their employment to attempt to avoid work." *Milne v. Berman*, 384 F. Supp. 206, 210 n. 3. (S.D.N.Y. 1974) (A. 577).

Other well recognized eligibility conditions also make it unlikely that persons would terminate their jobs for the purpose of qualifying for public assistance. As Mr. Justice Marshall recently stated:

> "Often welfare applicants must be stripped of their worldly goods before being admitted to the welfare rolls . . . [A person] may be required not only to exhaust his savings but also to convert many of his assets into cash before being able to fall back on public assistance. He may have to give up his home or cherished personal possessions in order to become eligible. . . . The level of subsistence provided by welfare is minimal, certainly less than one is apt to expect from steady employment." *Arnett v. Kennedy*, 416 U.S. 134, 221 (1974) (dissenting opinion).

This description of welfare eligibility rules and benefit levels is fully applicable to Home Relief assistance in New York. Home Relief is provided only to persons who have no resources, savings, cash, or other assets. *See* 18 N.Y.C.R.R. §§352.16, 352.22-28.[55]

---

[55]A person may be required to liquidate or assign all his equity in his home, *N.Y. Social Services Law*, §§104, 360 and 18 N.Y.C.R.R. §352.27, and he may be required to assign his personal injury claims, *N.Y. Social Services Law*, §105. See *Snell v. Wyman*, 281 F. Supp. 853 (S.D.N.Y. 1968), *aff'd*, 393 U.S. 323 (1969). A person may be ineligible simply because he possesses an automobile. 18 N.Y.C.R.R. §§352.15(d), 352.28(b). *See Knowles v. Lavine*, 42 App. Div. 2d 742, 346 N.Y.S.2d 296 (2d Dept. 1973) *rev'd on other grounds*, 34 N.Y.2d 721, 356 N.Y.S.2d 864 (1974). Some items are exempt. *See generally*, 18 N.Y.C.R.R. §§352.16-.29.

In New York the amount of Home Relief assistance now available to individuals like plaintiffs is $94.00 per month, or about $3.10 per day for all needs except shelter. *N.Y. Social Services Law*, §131-a (McKinney Supp. 1974).[56] A recent Congressional survey found that the average *total* public assistance benefits in New York City for an individual with no other income amounts to about $2,112 per year.[57] As a matter of general experience, people aspire to standards of living above a bare subsistence level. Yet that, at best, is all that Home Relief assistance provides.[58]

[56]Shelter allowances are provided on an "as paid" basis, up to maxima established in each welfare district. 18 N.Y.C.R.R. §352.3(a). Total amounts paid to recipients thus vary from county to county, but individual Home Relief recipients have at most $94 per month for all their non-shelter needs, and even less if their actual shelter costs exceed local maxima.

[57]Staff of Subcomm. on Fiscal Policy, Joint Economic Committee, 93d Cong. 2d Sess., Paper No. 15, *Welfare in the 70's: A National Study of Benefits Available in 100 Local Areas* 192 (Comm. Print 1974). In contrast, the after-tax earnings of a person in New York City earning $2.00 per hour are about $3,399 per year; the median after tax income for all men is $5,972 per year; and the median after-tax income for all women is $4,098 per year. *Id.*

[58]In addition, New York has the most stringent repayment provisions in the nation. *"Any public assistance or care received . . . shall constitute an implied contract. . . .* In all claims . . . the public welfare official shall be deemed a preferred creditor," *N.Y. Social Services Law*, §104(1). (Emphasis added). See Graham, *Public Assistance, The Right to Receive, The*

Welfare administrators have frequently stated that New York's public assistance allowances do not provide sufficient funds for a decent standard of living. See *Rothstein v. Wyman,* 303 F. Supp. 339, 348-49 (S.D.N.Y. 1969), *vacated and remanded on other grounds,* 398 U.S. 275 (1970). The New York City Commissioner recently stated that

> "the basic welfare grant has 'fallen far behind the pace of the rising cost of living.' The state ordered grants [established under Section 131-a of the New York Social Services Law] are based on standards as of January, 1972, and since that time the consumer price index has risen 25.1% . . .
>
> Mr. Dumpson says inflation has forced welfare families to cut down on food, clothing and other expenses, as well as on their 'social mobility'—the ability to better themselves." New York Times, Feb. 10, 1975, p. 45, col. 4 (brackets added).[59]

In hearings before a Congressional committee, a former acting New York State Commissioner was asked whether he believed people would quit their jobs in order to qualify for public assistance. He testified, in part:

Obligation to Repay, 43 N.Y.U.L. Rev. 478 (1968); Baldus, *Welfare as a Loan, An Empirical Study of the Recovery of Public Assistance Payments in the United States,* 25 Stan. L. Rev.123 (1973). See also, *Snell v. Wyman,* 281 F. Supp. 853 (S.D.N.Y. 1968), *aff'd* 393 U.S. 323 (1969).

[59]"For most recipients welfare still means living 'low on the hog.' Welfare is the 'good life' only for those who have not lived it." J. Feagin, *Subordinating the Poor: Welfare and American Beliefs* 114 (1975). *See* L. Goodwin, *Middle Class Misperceptions of the High Life Aspirations and Strong Work Ethic Held by the Welfare Poor,* 43 American Journal of Ortho-psychiatry 554 (July 1973).

> "But I question, if that is the line of reasoning, that the public assistance payment levels themselves, or even the combination of services are so liberal as to encourage people to leave work and to go on public assistance rolls." Testimony of Mr. Barry Van Lare, Acting Commissioner of the New York State Department of Social Services, in *Hearings before Subcommittee on Fiscal Policy of the Joint Economic Committee, Problems in Administration of Public Welfare Programs,* 92d Cong., 2d Sess. Part 1, at 362 (1972).[60]

And a former New York City Commissioner testified that "the kind of life welfare is, you know, there is not much incentive to cheat to get on it." Testimony of Mitchell T. Ginsberg, Commissioner of the New York City Department of Social Services in *Hearings before Senate Finance Committee on H.R. 16311,* 91st Cong., 2d Sess. Part 3, 1327-1328 (1970).[61] (Emphasis added). In addition, welfare is a stigmatized benefit, and "recipients know this." D. Moynihan, *Politics of a Guaranteed Income* 18, 98 (1972). "Rightly or wrongly, many people consider welfare degrading and would decline public assistance even when eligible." *Arnett v.*

---

[60]In addition, by providing public assistance to strikers, who by definition are dissatisfied with their working conditions, the State recognizes that people do not stop working in order to qualify for public assistance. "The state can hardly be viewed as encouraging strikes by allowing these [public assistance] payments; the prospect of receiving a fraction of normal wages, after the exhaustion of all savings and other assets, would hardly seem an incentive to strike." *Lascaris v. Wyman,* 31 N.Y.2d 386, 394 n. 4, 340 N.Y.S.2d 397, 402 (1972), quoting from Note, *Welfare Assistance to Strikers,* 67 Nw. U.L. Rev. 245, 260.

[61]The poor are no more likely to "drop out of the work force . . . to settle for this meager income . . . than are middle-class people." Goodwin, *Do the Poor Want to Work* 117 (Brookings 1972).

Kennedy, 416 U.S. 134, 221 (1974) (Marshall, J., dissenting).[62]

In addition, rigorous investigations, verifications, interviews, forms and recertifications make it unlikely that workers would leave their jobs for the purpose of attempting to qualify for public assistance. See 18 N.Y.C.R.R. Part 351.[63] The application process "make(s) every applicant believe that he [is] being viewed with suspicion, that, until the contrary could be established, the applicant [is] presumed to be a cheat or a parasite." G. Steiner, *The State of Welfare* 89 (Brookings, 1971). An official study of New York's welfare application process has reached the same conclusion. See *Report to the Moreland Commission on Welfare Findings of the Study of the Public Assistance Program and Operations of the State of New York* 78 (1962). The procedures for receiving assistance have been described as a "bureaucratic design in deterrance. One device is the intimidation of applicants, accomplished in part by hostile and mistrustful

[62]During 1968 in New York City, *approximately 150,000 families were eligible for wage subsidies* (according to the welfare department's own estimate), *but only about 15,000 families were claiming them.*" Piven & Cloward, *Regulating the Poor: The Functions of Public Welfare* 174 (Vintage: 1971). *See also, Relief Survey Says 480,000 Eligibles Seek No Aid Here*, New York Times, Nov. 23, 1973, p. 1, col. 4.

[63]These procedures are stringently complied with in New York. Piven and Cloward, *Regulating the Poor: The Functions of Public Welfare* 160 (Vintage: 1971).

treatment. . . ." F. Piven & R. Cloward, *Regulating the Poor: The Functions of Public Welfare* 152 (Vintage: 1971). *See Id.* at 160, 161 n. 20. (New York City Budget Bureau Recommendation to "build up and maintain the maximum legal backlog" of applications). *See also, Perez v. Lavine*, 378 F.Supp. 1390 (S.D. N.Y. 1974).[64]

In sum, New York's Home Relief program is based upon the well-established principle of "less eligibility" which ensures that it is much less desirable for a person to be a recipient of public assistance than to work as the "humblest independent laborer." N. Fensterstock, *History of New York Social Welfare Legislation*, p. X, 52A McKinney N.Y. Social Services Law (1966), citing Webb, *English Poor Law Policy* (1910). *See* J. Feagin, *Subordinating the Poor: Welfare and American Beliefs* 31, 71 (Spectrum, 1975); F. Piven & R. Cloward, *Regulating the Poor: The Functions of Public Welfare* 25, 36 (Vintage, 1971); W. Trattner, *From Poor Law to Welfare State: A History of Social Welfare in America* 49 (Free Press, 1974); G. Steiner, *The State of Welfare* 28 (Brookings, 1971). When the Work Rules and other eligibility conditions for Home Relief, the low level of benefits and the stigma of receiving public assistance are considered together with the multitude of ordinary, more likely reasons why persons terminate employment and become needy, it certainly cannot be said that the presumed motive is generally true as a matter of common experience and common sense.

This Court has looked to evidence embodied in legislative records as an aid in determining whether an

[64]*Cf.* N.Y. Times, Aug. 20, 1974 p. 39, col. 1 ("Crowding, Waiting Deject Welfare Families in Bronx"); N.Y. Times, Oct. 17, 1975, p.15, col. 4 ("Productivity Pressed To Cut Welfare Costs") (Home Relief waiting lines formed at midnight).

enactment of a presumption "accorded the evidence [of a proven fact] 'its natural probative force.'" *United States v. Romano*, 382 U.S. 136, 140 (1965), citing *United States v. Gainey*, 380 U.S. 63, 67, 71 (1965). *Accord, Leary v. United States,* 395 U.S. 6, 35 (1969). However, the legislative record contains no findings, factual reports, or hearings concerning the presumption in the case at bar.[65] It is "apparent that the legislative record does not supply an adequate basis upon which to judge the soundness . . . of the presumption." *Leary v. United States, supra* at 39.

The only possible basis to justify the presumption would be if the available data showed that members of the plaintiff class were persons who do not behave and think like ordinary men and women with respect to work and welfare. When there is a "paucity of direct evidence" as to the presumed fact, this Court has "found it desirable to survey data concerning" both the proved and presumed facts in deciding whether a fact may fairly be presumed to exist. *Leary v. United States,* 395 U.S. 6, 38-39 (1969; *Turner v. United States,* 391 U.S. 398, 409-418 (1970).

Since the presumption is contrary to common experience, and since there is no evidence in the record or legislative history to support it, the presumption is arbitrary unless it can be justified by empirical data

---

[65]The sparse legislative history of Section 131(11) is set forth at 2 N.Y. Sess. Laws 1971, 2510-11, 2636-7. Defendant submitted no data to show that it is actually likely that members of the plaintiff class quit their work for the purpose of qualifying for Home Relief assistance. *Milne v. Berman,* 384 F. Supp. 206, 212 (S.D.N.Y. 1974). "The style of welfare legislation in New York [in 1971] . . . was one of shrill hysteria. . . ." B. Diamond, *Poverty Law*, 23 Syracuse L. Rev. 569, 589 (1971).

from other sources. However, far from providing a factual basis to support the statutory inference, the available empirical data overwhelmingly show that the presumption is totally irrational, and that it is based upon factually unsupported stereotypes of poor persons. *Cf. Frontiero v. Richardson,* 411 U.S. 677, 685 (1973). All of the available evidence shows that poor people and welfare recipients have the same work ethic as other people, and that they do not generally terminate their employment for the purpose of qualifying for public assistance.

It is well recognized that there are many negative false stereotypes about poor persons and welfare recipients in our society, and that these stereotypes are embodied in punitive welfare legislation.[66] As Mr. Justice Marshall recently stated:

> "Myths abound in this area. It is widely yet erroneously believed, for example, that recipients of public assistance have little desire to become self-supporting. See, e.g., L. Goodwin, Do the Poor Want to Work?, 5, 51-52, 112 (1972). Because the recipients of public assistance generally lack substantial political influence, state legislators may find it expedient to accede to pressures generated by misconceptions. [There is a] possibility that erroneous beliefs will lead state legislators to single

---

[66]*See* B. Diamond, *The Children of Leviathon: Psychoanalytic Speculations Concerning Welfare Law and Punitive Sanctions,* 57 Calif. L. Rev. 357, 360 (1966). Simultaneously held compassionate and punitive attitudes toward the poor may have led legislators to promote benevolent welfare measures by coupling them with largely symbolic punitive measures. *See* D. Moynihan, *Politics of a Guaranteed Income* 16 n. 6, 32 n., 218-20 (Vintage, 1973).

out politically unpopular recipients of assistance for harsh treatment . . ." *New York State Department of Social Services v. Dublino*, 413 U.S. 405, 432 (1973) (dissenting opinion).[67]

New York welfare officials have also recognized that myths about the work ethic of welfare recipients are not justified in the experience of their agencies. The former Administrator of New York City's welfare programs testified before Congress:

> Public officials have their own set of myths about the welfare population too, and they are deluded by these myths. Although the public work program [established under the New York Work Rules] is, in many ways, a repressive measure, *we have found from our experience with the program . . . that the people required to participate are willing to work.*"
>
> Statement of Jule M. Sugarman in *Hearings Before the Subcommittee on Fiscal Policy of the Joint Economic Committee, on Problems in Administration of Public Welfare Programs* 220 92d Cong., 2d Sess. (1972). (Emphasis added).

---

[67]Some authors contend that false myths about the morality of the welfare poor are exploited by political "scapegoat" tactics which are designed to reduce "economic tension" resulting from welfare expenditures. J. Feagin, Subordinating the Poor: Welfare and American Beliefs 121 (Spectrum, 1975).

One of the best known incidents involving political exploitation of false negative stereotypes of welfare recipients occurred in Newburgh, New York. R. Levy, *et al.*, *Social Welfare and the Individual* 5-10 (Foundation, 1971), quoting from E. May, *The Wasted Americans* (1964); D. Moynihan, *The Politics of a Guaranteed Income* 27 (1973); Feagin, *supra* at 74; F. Piven & R. Cloward, *Regulating the Poor: The Functions of Public Welfare* 169 (Vintage, 1971). *See New York State Board of Social Welfare v. City of Newburgh*, 28 Misc.2d 539, 220 N.Y. Supp. 2d 54 (N.Y. Sup. Ct. 1969).

In addition the State Commissioner has represented to this Court that he regards as "significant" a statement of Senator Russell Long that, according to HEW studies, "more adults in families receiving welfare would prefer to work rather than remain on welfare," Brief of Appellant in *New York State Department of Social Services v. Dublino*, 405 U.S. 413 (1973) p. 33.

The myth that welfare recipients do not want to work has been consistently recognized by leading authorities as being unfounded.[68] As stated in *Work in America*, Report of a Special Task Force to the Secretary of Health, Education and Welfare (MIT Press, 1974):

> "Underneath the resentment and the frustration, and giving rise to them, are a host of *unverified assumptions* about the character and composition of the welfare population; most poor people don't want to work . . . people on welfare live well and easy; most people on welfare want to be on welfare; etc.

---

[68]*See, e.g.*, President's Commission on Income Maintenance: *Report, Poverty Amid Plenty, The American Paradox* 60 (1969); G. Steiner, *The State of Welfare* 20-27 (Brookings, 1971); L. Goodwin, *Do the Poor Want to Work* (Brookings, 1971); Report to the Secretary of Health, Education and Welfare, *Work in America* 176-177 (MIT, 1973) (A. 338); B. Schiller, *Empirical Studies of Welfare Dependency*, 8 Journal of Human Resources 19 (1973); J. Feagin, *Subordinating the Poor: Welfare and American Beliefs* 2 (Spectrum, 1973); F. Piven & R. Cloward, *Regulating the Poor: The Functions of Public Welfare* (Vintage, 1971) D. Moynihan, *The Politics of a Guaranteed Income* 218 (Vintage, 1973). *See also*, N.Y. Times, Oct. 6, 1974, p. 76, col. 1, ("Study Disputes Welfare Myth: Few Newcomers Reported Coming Here To Seek Aid"); N.Y. Times, Nov. 17, 1971, p. 73, col. 3 ("Westchester Study Disputes Usual Relief-Client Image").

Every one of these assumptions is demonstrably false as a generalization, and is true only in the occasional particular. The facts are that most poor people are not on welfare and the majority of poor people not only want to work but do work, year round and full time. . . ." *Id.* at 176. (A.338-9, 571). (Emphasis added).[69]

In recent years, a great amount of evidence has been accumulated concerning the work behavior of poor people and welfare recipients.[70] "[F]ederal agencies, especially the Manpower Administration of the U.S. Department of Labor, have funded a large number of research projects which bear directly on these issues [of poverty and dependency, marginal tax rates, motivation, work incentives, and general welfare reform]." Schiller, *Empirical Studies of Welfare Dependency: A Survey*, 8 Journal of Human Resources 19 (1973 Supp.). A summary of the findings of recent research published by the United States Department of Health, Education and Welfare concludes:

> "Increased sophistication of research on lower-income and deprived groups is correcting a long-held impression that the poor place no value on occupational and educational achievement. . . . [T]he poor . . . want relatively more improvement in their condition. They value the same material

[69]The Report concluded that "[t]he negative attitudes of most Americans about welfare thus constrain national leaders in their development of policy." *Id.*

[70]"[I]t is impossible not to be impressed by the extent to which [welfare] policy decisions are made and perpetuated on the basis of *beliefs* about facts rather than tested knowledge." D. Moynihan, *The Politics of a Guaranteed Income* 289 (Vintage, 1973), quoting from Burns, unpublished paper for Arden House Conference (1968). (Emphasis in original).

> comforts and luxuries. Psychologically they seek the securities that appeal to other Americans. They hold, with little qualification, to the same proprieties of social conduct." L. Irelan, ed., *Low Income Life Styles* (HEW 1971) (A. 405).

The results of *fifty-two* recent empirical studies, which are "remarkably consistent in their findings and [are] of generally high research quality," Schiller, *supra* at 20 n. 1, were recently summarized as follows:

> "Fortunately, the subject of work motivation is one of the most frequently researched issues in federally funded projects, so that ample data exist to guide policy decisions in this area. Information on motivation has been assembled from (1) actual work behavior, (2) expressed aspirations and attitudes, and (3) comparative profiles of employed and nonemployed poor. All of the data collected are markedly consistent and imply that the assumption that welfare recipients require extraordinary world-of-work orientation or other forms of motivation stimulus is *not* well founded."
>
> . . . Comparative studies of employed and unemployed poor indicate that these groups share virtually identical aspirations and attitudes. [References omitted]. What distinguishes the employed from the nonemployed poor at any point in time is not work ethic, but a combination of job opportunities and demographic problems. [References omitted]. . . . Indeed, some studies have even suggested that the poor have a *stronger* commitment to work than the nonpoor, implying that the motivation issue is a middle-class conceit. [References omitted].
>
> [T]he Manpower Report of the President has recognized that 'contrary to a widely held opinion, what the great majority of poor people need is not a stronger work ethic but added skills and more

employment opportunities." Schiller, *Empirical Studies of Welfare Dependency: A Survey* 8 Journal of Human Resources 21-22 (1973 Supp.).[71]

Thus the best available information shows that "there is no observable tendency for the poor to reject economic opportunities [i.e. work] for the 'comfort' of welfare status." *Id.* at 27.

The experience of the researchers is especially relevant in the case at bar because they have carefully studied the behavior and values of persons who, like plaintiffs, have applied for public assistance. The Manpower Administration funded a major study of the work attitudes of more than four thousand welfare recipients:

> "Evidence from this study unambiguously supports the following conclusion: poor people-males and females, blacks and whites, youths and adults-identify their self-esteem with work as strongly as the non-poor. They express as much willingness to take job training if unable to earn a living and to work even if they were to have an adequate income. They have, moreover, as high life aspirations as do the non poor and want the same things, among them a good education and a nice place to live. *This study reveals no differences between poor and nonpoor when it comes to life goals and wanting to work.*" Goodwin, *Do the Poor Want to Work? A Social-Psychological Study of Work Orientations*, 112 (Brookings, 1972) (A. 436). (Emphasis added).

---

[71] A bibliography of the reports of thirty-four research projects of the U.S. Departments of Labor and HEW, and eighteen other research projects, is set forth with Schiller's analysis of the research findings. *Id.* at pp. 30-32.

In proposing a new guaranteed minimum income, or "negative income tax" program,[72] the President's Commission on Income Maintenance Programs significantly did not recommend *any* work requirement as a condition of eligibility for guaranteed income maintenance payments. President's Commission on Income Maintenance Programs, *Report: Poverty Amid Plenty, The American Paradox* 8, 59 (1969). The Presidential Commission found it unlikely that people would quit work for the purpose of qualifying for a guaranteed minimum income:

> "[W]e do not believe that employment tests are needed. *Our observations have convinced us that the poor are not unlike the nonpoor.* Most of the poor want to work. They want to improve their potential and to be trained for better jobs. Like most Americans, the poor would like to do something with their lives beyond merely subsisting." *Id.* at 59-60. (Emphasis added).

To find out whether poor people would actually quit their work for the purpose of qualifying for public assistance without work rules, the United States Office of Economic Opportunity expended over eight million dollars in "the most ambitious socio-economic experiment ever undertaken in America without a base in legislation or executive order." G. Steiner, *The State of Welfare* 96 (Brookings, 1971). Low-income workers in New Jersey were offered a guaranteed income without

---

[72] The Commission made a comprehensive analysis of the existing public assistance structure and found that it "has severe flaws that prevent it from reaching all of the poor effectively." President's Commission on Income Maintenance Programs, *Report: Poverty Amid Plenty, The American Paradox* 4 (1969).

any work requirements. A self-reporting declaration system, analogous to federal income tax returns, was the basis for determining the amount of benefits paid. The New Jersey experiment was expressly designed to answer the question"whether cash allowances, whose net benefits decline as work income increases, significantly reduce work by the recipients." J. Pechman & P. Timpane, *Work Incentives and Income Guarantees* 1 (Brookings, 1975). The subjects of the study were persons who, like plaintiffs, if they quit work and became needy, would qualify for "whatever low-level grants might be made from local general assistance." F. Skidmore, *Operational Design of the Experiment* in J. Pechman & P. Timpane, *supra* at 28.[73]

Upon completion of the New Jersey experiment, the researchers summed up their findings as follows:

> "[A] negative tax type plan with a basic benefit as high as the official poverty line will not trigger large-scale reductions in work effort among male heads of families. Indeed, there is no evidence here that even a small proportion of male heads would drop out of the labor force completely because of such a plan; small labor force reductions are likely to be spread over large numbers of workers. Without a mandatory work requirement the male heads of families maintained high levels of labor force participation under all of the experimental

[73]"Public debate on the issue of a universal guaranteed income of some kind generally had narrowed down to the question of the possible idleness of the working poor. Able-bodied males were the only people in American society who as a group had never qualified for [federal categorical] public assistance." F. Skidmore, *supra* at 28.

> plans." Institute for Research on Poverty, *The New Jersey Graduated Work Incentive Experiment:* Summary Report, vi-vii (1973).

The results of the New Jersey study clearly show that poor workers are unlikely to drop out of the labor force for the purpose of obtaining welfare benefits, even where the benefits are provided without a work requirement. I. Garfinkel, *Income Transfer Programs and Work Effort: A Review*, in Subcommittee on Fiscal Policy, Joint Economic Committee, *Studies in Public Welfare*, Paper No. 13, 13 (93d Cong. 2d Sess.).[74] After this vast empirical study, the burden of proof is now on those who assert that income maintenance programs like Home Relief cause people to quit their jobs for the purpose of qualifying for public assistance. J. Pechman & P. Timpane, *supra* at 11, 87.

Another study has carefully analyzed the relationship between labor force participation of able-bodied males and the amount of general assistance benefits available in different areas, to determine whether in areas where general assistance benefits are higher, people would leave their jobs to obtain them. The researchers concluded:

> "[W]e found no significant association whatsoever between public welfare expenditures and [labor force participation of able-bodied males, aged

[74]Small amounts of reduction of *hours* worked by some persons in the New Jersey experiment were consistent with predictions of the President's Commission that "reduced work effort is likely to be concentrated among secondary family workers, female family heads, and the elderly, rather than among non-aged family heads." President's Commission on Income Maintenance Programs, Report: *Poverty Amid Plenty, The American Paradox* 8 (1969).

18-54]. If the availability of public welfare payments in an area has deterred prime-aged males from participating in the labor force, it is not evident in these data." W. Bowen and T. Finegan, *The Economics of Labor Force Participation* 72 (Princeton University Press 1969) (A. 383-392).

This study is significant because it also shows that there is no factual support for an assumption that the availability and amount of general assistance causes persons to drop out of the labor force for the purpose of obtaining public assistance.

A Manpower Administration study was also conducted to determine whether any identifiable class of persons disadvantaged due to racial discrimination, poverty, a lack of education, skills, prior work experience, and other factors is predisposed to terminate employment. The Manpower Administration studied the duration of employment of disadvantaged persons in an attempt to discover why they terminated their jobs. The researchers found that:

> "A number of background work attitudes, or predispositions, appeared to be related to participation or entry into the labor force, but these attitudes had little or no connection to the person's duration on the job, once he had it. *Once on the job, other attitudes, related to the immediate job, appeared to be associated with duration on that job.*" U.S. Department of Labor, Bureau of Labor Statistics Report 401, *Work Attitudes of Disadvantaged Black Men.* (U.S. G.P.O., 1972) (A. 430). (Emphasis added).

In sum, the available information supplied by extensive recent research into the behavior and attitudes of poor people and welfare recipients shows that they have the same work ethic as other people, and that

they, like other people, are likely to terminate their employment for ordinary reasons, and not for the purpose of qualifying for welfare benefits. Thus, present day experience and the facts known about poor people and welfare recipients do not establish a sufficient connection between the given facts and the purpose presumed by statute. *Cf., Mobile, J.&K.C.R.R. v. Turnipseed,* 219 U.S. 35 (1910).

In addition, considerations of fundamental fairness militate against the use by defendant and his agents of the presumption. In operation, the presumption imposed upon plaintiffs the heavy burden of proving a negative to the satisfaction of defendant and his agents.

In sharp contrast to the severe harm suffered by plaintiffs due to the enforcement of the presumption, defendant makes spurious claims that the presumption is administratively necessary. For example, he claims at one point that the presumption is necessary because

> "it would not be feasible for the social services agency to establish affirmatively in every case the reasons why the applicant left his job." Brief for Appellant, p. 23.

But in the court below, defendant's officer having "immediate responsibility for the operations" of the New York State Department of Social Services, Executive Deputy Commissioner Edward W. Maher (A. 443), swore, contrary to all of the evidence in this case, that "the determinations [to impose the 75-day sanction] are based on evidence, *not* on presumption. . . ." (A. 453). (Emphasis added). The State Commissioner should not now be heard to complain of a judgment that has only directed him to implement

what he represented to the three-judge court as already being his policy.[75]

Defendant now argues that the presumption is necessary to render "the public assistance programs workable," Brief for Appellant, p. 23, because otherwise "it would be virtually impossible" to determine why a person terminated employment, *Id.* at 30. But he simultaneously concedes that "even if the District Court's opinion were affirmed," "the local .... agency still has the duty to determine whether, in fact, the applicant terminated his employment for the purpose of [qualifying for Home Relief assistance]...." *Id.* at 47. Contrary to defendant's inconsistent argument that the presumption is at the same time both indispensable and superfluous, in reality the presumption was unnecessarily and arbitrarily used to deprive individuals of aid necessary to their existence without a determination of the actual facts.

The use of such a presumption against the plaintiffs is fundamentally unfair. In *Goldberg v. Kelly*, 397 U.S. 254 (1970), this Court held that "the opportunity to be heard must be tailored to the capacities and circumstances of those who are to be heard." *Id.* at

---

[75]In addition, the instructions issued to comply with the order of the three judge court require decisions on imposition of the sanctions to be based upon findings "from all available evidence as a fact." (Appendix "C" to this brief) And the State Commissioner's Executive Deputy represented that

> "the determination whether section 131[(11)] applies to a given applicant for public assistance always involves an evaluation of the facts of the particular case, both as to whether the termination was voluntary and whether the purpose was to obtain public assistance." (A. 449).

268-9. Presumptions are sophisticated legal rules that at times are difficult even for lawyers to comprehend and overcome. *See Laskey Bros. of W. Va. Inc. v. Warner Bros. Pictures*, 224 F.2d 824, 827 (2d Cir. 1955), *cert. denied*, 350 U.S. 932 (1956). In the case at bar, "those persons to whom the presumption is directed are typically the least capable socially, intellectually, economically and physically to employ the means to rebut the presumption." *Owens v. Roberts*, 377 F.Supp. 45, 53 (M.D. Fla. 1974) (three-judge court). *Accord, Goldberg v. Kelly, supra* at 269; *Milne v. Berman*, 384 F. Supp. 206, 212 (S.D.N.Y. 1974) (three-judge court). As the court below stated, "what we are concerned with here is a matter of fairness.... To require the plaintiffs to [overcome the presumption and] ... to prove their innocent motives for terminating employment is effectively to deny them all chances of obtaining the benefits which they seek." *Milne v. Berman, supra.* Although plaintiffs do not oppose an inquiry into the reason for job termination, it is unfair for defendant to presume the answer without factual support.

In conclusion, the presumption that plaintiffs terminated their employment for the specific purpose of qualifying for Home Relief assistance lacks the necessary rational connection. The presumption is contrary to general experience because it is far more likely for people to terminate employment for ordinary reasons related to their work and personal problems than for the purpose of qualifying for Home Relief assistance, particularly when it is considered that the low amount of benefits are conditioned upon rigorous work and means tests. Moreover, the available information about the behavior of people who have applied for

and who receive welfare benefits, studies of the reasons why people quit employment, and experiments actually offering minimum guaranteed incomes without any work requirement, all show that poor people and welfare recipients have the same work ethic as other people have, that when they terminate their employment, they do so for the same kinds of ordinary common sense reasons as the nonpoor, and that they do not terminate their employment for the purpose of qualifying for public assistance. Because there is no rational connection between the given facts and the purpose presumed by the statute, the presumption violates the Due Process Clause. *Mobile, J.& K.C.R.R. v. Turnipseed,* 219 U.S. 35 (1910).

II.

DEFENDANT'S ENFORCEMENT OF NEW YORK SOCIAL SERVICES LAW, §131(11) VIOLATES THE DUE PROCESS CLAUSE BECAUSE THE TIMING OF THE STATE'S FAIR HEARING PROCEDURE DEPRIVED PLAINTIFFS OF AN OPPORTUNITY TO REBUT THE PRESUMPTION PRIOR TO THE IMPOSITION OF THE SANCTION, AND DURING THE SEVENTY-FIVE DAY STATUTORY SANCTION PERIOD

On its face, the statutory presumption purports to be rebuttable. In operation, however, the timing of the State's "fair hearing" procedure deprived plaintiffs of a fair opportunity to rebut the statutory presumption. Plaintiffs were not afforded any opportunity to rebut the presumption prior to the imposition of the

sanctions. Moreover, the fair hearings afforded plaintiffs were generally not determined until well into or even after the end of the seventy-five day sanction period. While waiting for their fair hearing decisions, the sanctions caused plaintiffs grave hardships. Several went hungry and were evicted or threatened with eviction.

Plaintiffs contend that they were denied a fair opportunity to rebut the statutory presumption; that Due Process requires that the opportunity to rebut the presumption be afforded prior to the imposition of the statutory sanctions; and that defendant's failure to provide a timely opportunity to rebut had the effect of turning the statutory rebuttable presumption into a conclusive presumption during the seventy-five day period.

A. The State's Procedures Did Not Afford Plaintiffs A Fair Opportunity to Rebut The Presumption.

It is well established that for a rebuttable presumption to comport with the Due Process Clause, a party must be afforded a "fair opportunity" to present evidence to rebut it. *Adler v. Board of Education,* 342 U.S. 485, 495 (1952); *Heiner v. Donnan,* 285 U.S. 312, 329 (1932) ("...a fair opportunity to rebut it...."); *Bandini Petroleum Co. v. Superior Court,* 284 U.S. 8, 19 (1931) ("...a full opportunity to present all the facts...."); *Manley v. Georgia,* 279 U.S. 1, 6 (1929); *Western & A. R.R. v. Henderson,* 279 U.S. 639, 642 (1929); *Lindsley v. National Carbonic Gas Co.,* 220 U.S. 61, 82, 1911); *Mobile, J. & K.C.R.R.*

v. Turnipseed, 219 U.S. 35, 43 (1910) ("...a reasonable opportunity to submit ... all of the facts bearing upon the issue...."); *Bailey v. Alabama*, 219 U.S. 219, 238 (1911).

This Court has held that "(i)n reviewing state action in this area ... we look to substance, not to bare form, to determine whether constitutional minimums have been honored." *Bell v. Burson*, 402 U.S. 535, 541 (1971); *Willner v. Committee on Character and Fitness*, 373 U.S. 96, 106-107 (1963) (Goldberg, J. concurring); *Oyama v. California*, 332 U.S. 633, 636 (1948). Looking to substance rather than form, it is clear from the record that plaintiffs were not afforded a fair opportunity to rebut the presumption and were the victims of "reflexive" impositions of statutory sanctions. *Owens v. Roberts*, 377 F. Supp. 45, 52 (M.D.Fla. 1974) (three-judge court).

Defendant claims that plaintiffs could rebut the presumption at the local social services offices. The record is clear, however, that plaintiffs were not afforded any opportunity to rebut the statutory presumption at the time they applied for assistance at local offices of the New York Department of Social Services. 18 N.Y.C.R.R. Parts 350 and 351. Plaintiffs were simply given terse notices by local officials that they were "sanctioned" for seventy-five days because they had terminated their employment within seventy-five days of their application for public assistance, and that if they were not satisfied with this determination, they could request a fair hearing from the New York State Department of Social Services. (A. 29, 43-44, 72,

173-174, 242-243, 312, 316, 590-595, 636-637, 641).[76]

Plaintiffs were not even informed at the local agency of the existence of the presumption and that they could submit evidence to the local agency to rebut it. Nor do the State regulations quoted in the State Commissioner's Brief, pp. 44-45, require the local agency to inform persons who are sanctioned of the existence of the presumption and how it operates.

Plaintiffs were not afforded a hearing of any kind at the local agency. They had not received prior notice of the reason for the imposition of the sanction, i.e., a presumed motive on their part to qualify for assistance, and thus did not have an opportunity to confer with counsel, and to gather and present relevant evidence. In addition, they had no opportunity to obtain a decision from an impartial decision maker. All of the minimal due process protections were absent at the time the sanctions were imposed. *See generally, Goldberg v. Kelly*, 397 U.S. 254 (1970). As this Court stated in *Roller v. Holly*, 176 U.S. 398, 409-410 (1900):

---

[76]The notice of assistance denial given to a person who is sanctioned delineates the scope of the issues at the fair hearing. 18 N.Y.C.R.R. §358.11(e). See *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974); *In re Ruffalo*, 390 U.S. 544, 550 (1968). A recent study concluded "that 60 percent of the hearing appellants had received little or no information at the center to further explain the agency's action beyond the statement given on the advance notice." D. Baum, *The Welfare Family and Mass Administrative Justice*, Appendix B, 93 (Praeger, 1974). Defendant's unsupported claim that the presumption "is easily rebuttable" is completely refuted by the record. In addition, plaintiffs could not "easily rebut" a presumption they did not know existed.

> "[A] man should not be required . . . instantly to answer a charge . . . on the same or even the next day and should be allowed not only ample time to obtain legal advice and assistance, but also to collect his evidence; and even the convenience of witnesses should be considered; and therefore in general several days should intervene between the time of summons and hearing."

See also, Wolff v. McDonell, 418 U.S. 539, 564 (1974), where the Court disapproved of a procedure where "the inmate first receives notice of the actual charges at the time of the hearing before the Adjustment Committee." *Accord, Morgan v. United States*, 304 U.S. 1, 18 (1938).

The contested statute, which provides that the presumption controls "in the absence of *evidence* to the contrary," itself contemplates that the appropriate place to rebut the presumption is at an administrative hearing. *N.Y. Social Services Law*, §131 (11) (McKinney Supp. 1974) (emphasis added). In *Adler v. Board of Education*, 342 U.S. 485, 495 (1952), the Court stated that

> "the 'phrase *prima facie* evidence of disqualification' as used in the statute, imports a hearing at which one . . . shall be afforded an opportunity to present substantial evidence contrary to the presumption. . . ."

In addition, the notices informing plaintiffs of the imposition of the seventy-five day sanction stated that if plaintiffs wished to challenge the sanctions and present "evidence" (A. 243) on their behalf, they could do so by requesting State fair hearings. (A. 29, 43-44, 72, 173-174, 242-243, 312, 316, 590-591, 595, 636-637, 641).

It is thus clear that State fair hearings were the only means to contest the denials of assistance and to refute the statutory presumption. *N.Y. Social Services Law*, §166 (McKinney Supp. 1974); 18 N.Y.C.R.R. Part 358; [Defendant's Answer, ¶¶13-14 (A. 142)][77]

The *timing* of the State's fair hearing procedure, however, renders it totally inadequate for persons who are sanctioned for seventy-five days on the basis of the statutory presumption. Plaintiffs were not provided any opportunity to rebut the presumption prior to the imposition of the sanctions, and generally during the entire seventy-five day sanction periods.

State fair hearings are generally scheduled three to four weeks after they are requested. (Jurisdictional Statement, pp. 5, 25). Moreover, the State Commissioner has ninety days from the date of the hearing request to render a fair hearing decision. 18 N.Y.C.R.R. §358.18.[78] Defendant admits that an expedited hearing

---

[77]This hearing procedure was established to comply with this Court's decision in *Goldberg v. Kelly, supra*, and with the decision in *Almenares v. Wyman*, 453 F.2d 1075 (2d Cir. 1971), *cert. denied*, 405 U.S. 944 (1972).

[78]This regulation setting forth a 90-day time period changed the requirement from the prior 60-day requirement. It is significant that the State regulation does not require that the decision be *implemented* within the 90-day period. With respect to recipients in categorical programs, it has been held that 18 N.Y.C.R.R. §358.18 conflicts with 45 C.F.R. §205.10, which requires a decision *and* implementation within the 90-day period. *Cisco v. Lavine*, 72 Misc.2d 1087, 341 N.Y.S.2d 719 (Sup.Ct. 1973). The State Commissioner has had difficulties complying with the regulatory time requirements. *Nelson v. Sugarman*, 361 F.Supp. 1132 (S.D.N.Y. 1972); *Cisco v. Lavine*, 72 Misc.2d 1009, 340 N.Y.S.2d 275 (Sup.Ct. 1973), *modified on reargument*, 72 Misc.2d 1087, 341 N.Y.S.2d 719 (Sup.Ct. 1973). See Brief for Appellant, p. 51.

procedure does not exist for persons denied assistance pursuant to the statutory presumption. [Brief for Appellant, p. 51; Jurisdictional Statement, p. 25; A. 142-143, 544-545].[79]

Defendant's suggestion that an expedited hearing procedure "might be available"[80] pursuant to the decision in *Jones v. Berman*, 37 N.Y.2d 42, 371 N.Y.S.2d 422 (1975) is not well founded. *Jones* only deals with the hearing rights of persons denied *Emergency Assistance, N.Y. Social Services Law*, §350-j (McKinney Supp. 1974), and not with persons who are sanctioned with a seventy-five day denial of *Home Relief* assistance under the challenged statute. Moreover, defendant has admitted that emergency assistance is not available to a person who has been sanctioned under Section 131(11). *Milne v. Berman*, 384 F. Supp. 206,

[79]In addition, the evidence indicates that the State takes the longest amount of time to render fair hearing decisions in cases of persons denied assistance. *Nelson v. Sugarman*, 361 F.Supp. 1132, 1141 (S.D.N.Y. 1972); *Cisco v. Lavine*, 72 Misc.2d 1009, 340 N.Y.S.2d 275, 283, *modified on reargument*, 72 Misc.2d 1087, 341 N.Y.S.2d 719, 724-725 (Sup.Ct. 1973); D. Baum, *The Welfare Family and Mass Administrative Justice*, Community Evaluation of Fair Hearing Procedures to Public Assistance Recipients, Appendix B, 100 (Praeger, 1974). Unlike cases of welfare termination or reduction which are "aid continuing," 18 N.Y.C.R.R. §358.8(c)(1), where the State has a financial incentive to render prompt decisions, the State has no such incentive to render prompt decisions in cases of persons denied assistance. *Cisco v. Lavine*, 72 Misc.2d 1009, 340 N.Y.S.2d 275, 283 (Sup.Ct. 1973). Cf. *Arnett v. Kennedy*, 416 U.S. 134, 224 (1974) (Marshall, J. Douglas, J. and Brennan, J. dissenting) ("[T]hese agencies which take three months or more to hold post termination hearings have little incentive to decide dismissal cases more promptly, since the employee has already been discharged and he bears most of the costs of delay.")

[80]Brief for Appellant, 49.

212 n. 6 (S.D.N.Y. 1974) (A. 572); *N.Y. Social Services Law*, §133 (A. 480-481, 545-546).

Since the State Commissioner has up to ninety days from the date of the hearing request to render a fair hearing decision, a person who is sanctioned pursuant to the statutory presumption has no opportunity to rebut the presumption prior to the imposition of the sanction and generally during the entire seventy-five day statutory sanction period. For example, proposed intervenors Reid and Brownlee did not receive their fair hearing decisions until after the end of the 75-day sanction period. (A. 294-295, 297-298).[81] Class member Phillips received his Decision After Fair Hearing more than three months after employment termination. (A. 310; *Matter of Allen Phillips*, Fair Hearing Decision, April 29, 1974, annexed hereto as Appendix "A"). Class member Scarfone received his Decision After Fair Hearing 68 days after employment termination. (A. 319-321).[82] And, intervenor Lee's hearing was not

[81]There is some discrepancy as to Brownlee's date of employment termination. While the Decision After Fair Hearing lists this date as March 13, 1973, (A. 306), Brownlee's counsel's affidavit and the Statement Pursuant to Rule 9(g) of the Civil Rules for the Southern and Eastern Districts of New York set forth without contradiction by defendant the date of termination as March 2, 1973. (A. 256, 297). Moreover, the Decision of the New York State Department of Labor sets forth the date as March 2, 1973. (A. 300).

[82]The time periods of proposed intervenors Brownlee and Reid and class member Scarfone are probably most indicative of the time lapse between hearing request and decision since these were persons who received fair hearing determinations prior to seeking any relief from the Court.

even scheduled until after the seventy-five day period. (A. 255).

Defendant's fair hearing procedure does not provide a "fair" or "reasonable opportunity" to rebut the statutory presumption. A hearing determination rendered after the end of the statutory sanction period is "totally meaningless"[83] to a needy person who has gone hungry or faced eviction as a result of the sanctions imposed under the challenged statute.

B. Due Process Requires A Hearing Prior To The Imposition Of A Seventy-Five Day Sanction.

Because the imposition of the seventy-five day sanction causes a significant taking and severe harm, a fair opportunity to rebut the statutory presumption requires that defendant afford hearings and render determinations prior to the imposition of the statutory sanctions:

The imposition of the seventy-five day sanctions constituted significant forfeitures of assistance that otherwise would have been provided. These were penalties imposed because of a presumed wrongful purpose in job termination. Defendant's Brief, pages 3, 7, 13, 55, the State regulation which tracks the contested statute, 18 N.Y.C.R.R. §385.7, several of the denial notices, administrative letters and fair hearing decisions repeatedly refer to the imposition of a "sanction." (A. 29, 58, 242-243, 282, 454-455, 631, Fair Hearing Decision of Shirley Miller, annexed to this

[83]*Milne v. Berman*, 384 F.Supp. 206, 211 n. 5 (S.D.N.Y. 1974) (A. 577).

Brief as Appendix "B".) *Cf.* 18 N.Y.C.R.R. §370.4(h)(2); *Kennedy v. Mendoza-Martinez*, 372 U.S. 144,169 (1963).[84] Since property interests "are created and their dimensions are defined by" state law, defendant's recognition of the punitive nature of the seventy-five day forfeiture is significant. *Board of Regents v. Roth*, 408 U.S. 564, 577 (1972). Moreover, plaintiffs "had a claim of entitlement to welfare payments that was grounded in the statute defining eligibility for them." *Id*, at 577. *Accord, Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963); *Goldsmith v. Board of Tax Appeals*, 270 U.S. 117, 123 (1926); *Bratton v. Chandler*, 260 U.S. 110 (1922); *Hornsby v. Allen*, 326 F.2d 605, *adhered to on rehearing*, 330 F.2d 55 (5th Cir. 1964). See generally, *Arnett v. Kennedy*, 416 U.S. 134, 179-180 (1974) (White, J., concurring in part and dissenting in part).

The opportunity for a hearing must be "appropriate to the nature of the case." *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 313 (1950); *Bell v. Burson*, 402 U.S. 535, 540 (1971). This requires that the hearing be granted "at a meaningful time and in a meaningful manner." *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). A meaningful time is "a time when the

[84]Historically, sanctions were imposed on vagrants both in England and in this country. J. Feagin, *Subordinating the Poor: Welfare and American Beliefs* 18 (Spectrum, 1975) "In seventeenth century Massachusetts, Rhode Island and Connecticut there were laws for the imprisonment or whipping of the able-bodied unemployed." *Id.* at 25. While plaintiffs do not contend that the sanctions are criminal penalties, *Flemming v. Nestor*, 363 U.S. 603 (1960), it is significant that several of the fundamental aspects of a criminal penalty are present: an affirmative disability, based on scienter, with a deterrent purpose. *See Kennedy v. Mendoza-Martinez, supra* at 168.

deprivation can still be prevented." *Fuentes v. Shevin, supra* at 80; *Sniadach v. Family Finance Corp.*, 395 U.S. 337, 340-341 (1969).[85] In enforcing the statutory presumption, defendant does not hold, determine and implement hearings at a time when the harm and deprivation that result from erroneous determinations can be prevented.

In determining whether the timing of a hearing procedure comports with the Due Process Clause, this Court has weighed (a) the gravity of the deprivation and the harm to the claimant and (b) the risk that the initial determination may be erroneous, against (c) the administrative burden and expense. *Arnett v. Kennedy*, 416 U.S. 134, 168-169, 190-192 (1974) (Powell, J. concurring) (White, J. concurring in part and dissenting in part); *Goldberg v. Kelly*, 397 U.S. 254 (1970). See also, *Goss v. Lopez*, 419 U.S. 565, 579 (1975); *Board of Regents v. Roth*, 408 U.S. 564, 570 (1972); *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *Cafeteria & Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961).

"The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.' "

---

[85]This Court's recent due process cases have often focused on the requirement that hearing procedures be afforded at a meaningful time. E.G., *Arnett v. Kennedy*, 416 U.S. 134 (1974); *Morrissey v. Brewer*, 408 U.S. 471, 485 (1972); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Stanley v. Illinois*, 405 U.S. 645, 647 (1972); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Armstrong v. Manzo*, 380 U.S. 545 (1965). See also, *Fusari v. Steinberg*, 419 U.S. 379, 95 S.Ct. 533, 539-540 (1975).

Goldberg v. Kelly, 397 U.S. 254, 262-263 (1970), quoting from *Joint Anti-Fascist Refugee Committee v. McGrath*, 341 U.S. 123, 168 (1951). The imposition of a seventy-five day sanction of public assistance benefits can deprive a person of the very means to subsist while awaiting a fair hearing decision. *See Sniadach v. Family Finance Corp.*, 395 U.S. 337, 339 (1969) ("[I]n the interim the wage earner is deprived of his enjoyment of earned wages without any opportunity to be heard. . . ."). "[T]o the hungry 75 days is sufficient time in which to starve." *Milne v. Berman*, 384 F. Supp. 206, 212 (S.D.N.Y. 1974) (A. 572). During this time, under New York law, a needy individual cannot even obtain a grant of emergency assistance. *Milne v. Berman, supra* at 212 n. 6; *N.Y. Social Services Law*, §133. (A. 480-481, 545-546). And, compounding the harm is the fact that the 75-day sanction has been imposed on the basis of a presumed wrongful intent rather than on the basis of actual facts.[86]

In *Goldberg v. Kelly*, 397 U.S. 254 (1970), this Court held that because of the severe, irreparable harm that attends a denial of public assistance, due process requires a hearing prior to its deprivation. See also,

---

[86]The possibility of obtaining retroactive benefits is small comfort to a person who has been wrongfully sanctioned and deprived of the means to subsist for the seventy-five day period. Cf. *Nash v. Florida Industrial Commission*, 389 U.S. 235,239 (1967). For example, although class member Scarfone prevailed at his hearing, he was forced to leave his apartment because he could not pay his rent while awaiting his decision. In any case, "(t)his Court has not, however, embraced the general proposition that a wrong may be done if it can be undone." *Stanley v. Illinois*, 405 U.S. 645, 647 (1972); *Fuentes v. Shevin*, 407 U.S. 67, 83 (1972).

Sniadach v. Family Finance Corp., 395 U.S. 337 (1969). The Court in *Goldberg* stated:

> "For qualified recipients, welfare provides the means to obtain essential food, clothing, housing, and medical care.
>
> Thus the crucial factor in this context—a factor not present in the case of the black-listed government contractor, the discharged government employee, the taxpayer denied a tax exemption or virtually anyone else whose governmental largesse is ended—is that *termination of aid pending resolution of a controversy over eligibility may deprive an eligible recipient of the very means by which to live while he waits.* Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistance, in turn, adversely affects his ability to seek redress from the welfare beauracracy." *Goldberg v. Kelly, supra* at 264. (Emphasis added).[87]

Unlike the discharged public employee, who may be able to secure a job in the private sector, or who may be eligible for unemployment compensation or public assistance, *Arnett v. Kennedy*, 416 U.S. 134, 169 (1974) (Powell, J. concurring), and unlike a person denied unemployment compensation benefits, who may still be eligible for public assistance, *Torres v. New York State Department of Labor*, 321 F. Supp. 432, 437 (S.D.N.Y. 1971) (three-judge court), *vacated and remanded*, 402 U.S. 968 (1971), an unemployed person denied public assistance has no other source to meet his

[87]This Court also recognized the critical importance of public assistance benefits in *Memorial Hospital v. Maricopa County*, 415 U.S. 250, 259, (1974) and in *Shapiro v. Thompson*, 394 U.S. 618, 627 (1969).

minimal subsistance needs. *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970).[88] This is substantiated by the cases of plaintiff Milne[89] and the numerous other persons who were sanctioned for seventy-five days on the basis of the statutory presumption, and who were severely harmed because they had no money for food and rent. (A. 12-13, 39, 64-66, 90, 152, 278, 287-288, 311, 589, 594, 635, 640, 652, 655).

The risk that the initial agency decision was in error is also fundamental in determining the procedures required by the Due Process Clause. *Arnett v. Kennedy*, 416 U.S. 134, 170, 190, 194 (1974) (Powell, J. concurring) (White, J. concurring in part and dissenting in part); *Goldberg v. Kelly*, 397 U.S. 254, 26 n. 12 (1970). *See Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 739 (1975); *North Georgia Finishing Co. v. Di Chem*, 419 U.S. 601, 608 (1975); *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 618 (1974). "Rules of procedure are often shaped by the risk of making an erroneous

[88]Even in the context of unemployment compensation, the timing of procedures is significant. In *Fusari v. Steinberg*, 419 U.S. 379, 95 S.Ct. 533, 540 (1975), the Court stated: "In this context, the possible length of the wrongful deprivation of unemployment benefits is an important factor in assessing the impact of official action on the private interests. Cf. Arnett v. Kennedy, 416 U.S. 134, 168-169, 94 S.Ct. 1633, 1651-1652, 40 L.Ed.2d 15 (Powell, J. concurring); *Id*, at 190, 192, 94 S.Ct. at 1662, 1663 (White, J. concurring in part and dissenting in part). Prompt and adequate administrative review provides an opportunity for consideration and correction of errors made in initial eligibility determinations. Thus, the rapidity of administrative review is a significant factor in assessing the sufficiency of the entire record."

[89]Plaintiff Milne and proposed intervenor Brownlee were erroneously denied unemployment compensation. (A. 268, 300-301).

determination." *Arnett v. Kennedy, supra* at 201. (White, J. concurring in part and dissenting in part). *See also In re Winship,* 397 U.S. 358, 368-373 (1970) (Harlan, J. concurring). It is clear from the record that defendant and his agents made a great number of erroneous determinations in imposing sanctions on the basis of the statutory presumption. See Brief for Appellant, p. 18, referring to the "misapplication" of Section 131(11), but ignoring the harm resulting from the misapplications.

The "welfare bureaucracy's difficulties in reaching correct decisions on eligibility" have been well documented. *Goldberg v. Kelly, supra* at 264 n. 12, citing Comment, *Due Process and the Right to a Prior Hearing in Welfare Cases,* 37 Ford.L.Rev. 604, 610-611 (1969); *Arnett v. Kennedy,* 416 U.S. 134, 190, n. 10 (1974) (White, J. concurring in part and dissenting in part), citing Handler, *Justice for the Welfare Recipient: Fair Hearings in AFDC–The Wisconsin Experience,* 43 Soc.Serv.Rev. 12, 22 (1969); D. Baum, *The Welfare Family and Mass Administrative Justice, Community Evaluation of Fair Hearing Procedures to Public Assistance Recipients,* Appendix B, p. 88 (Praeger, 1974); O'Neil, *Of Justice Delayed and Justice Denied: The Welfare Prior Hearing Cases,* The Supreme Court Review 171 (1970). There is an "unusual risk of error inherent in the welfare eligibility process. . . ." O'Neil, *Of Justice Delayed and Justice Denied, supra* at 171. See also *Yee-Litt v. Richardson,* 353 F. Supp. 996, 999-1000 (W.D.Cal.1973) (three-judge court), *aff'd sub nom Carleson v. Yee-Litt,* 412 U.S. 924 (1973). One study reveals that with respect to cases of persons denied assistance in New York, the local agency is

upheld in only thirty eight percent of the cases after State fair hearings. D. Baum, *The Welfare Family and Mass Administrative Justice, Community Evaluation of Fair Hearing Procedures to Public Assistance Recipients,* Appendix B, 88 (Praeger 1974).[90] As this Court has concluded, "(t)he stakes are simply too high for the welfare recipient, and the possibility of honest error or irritable misjudgment too great" to allow the State to forfeit assistance without a *prior* hearing. *Goldberg v. Kelly,* 397 U.S. 254, 266 (1970), quoting from *Kelly v. Wyman,* 294 F. Supp. 893, 904-905 (S.D.N.Y. 1968) (three-judge court). When the State acts on the basis of presumptions and does not attempt to ascertain the actual facts, the probability of error is increased.

The high rate of error in the welfare decision making process has been attributed to the "heavy caseloads placed upon often inexperienced caseworkers, the high rate of turnover among caseworkers, the difficulty of generating accurate information about a population that is frequently anonymous and difficult to reach and with whom communication is severely hampered by suspicion and by barriers of language and culture. . . ." O'Neil, *Of Justice Delayed and Justice Denied: The Welfare Prior Hearing Cases,* The Supreme Court Review, 171 (1970). *Accord,* Mashaw, *The Management Side of Due Process: Some Theoretical and Litigation Notes On The Assurance of Accuracy, Fairness, And Timeliness In The Adjudication of Social Welfare*

---

[90]National statistics indicate that from January to June, 1974, persons challenging all welfare department determinations prevailed in 38.9 percent of the cases after requesting fair hearings. United States Department of Health, Education and Welfare, *Fair Hearings in Public Assistance* 11 (January, 1975). "The state reversed 50 per cent of [New York] City's actions from April through August [1975]. . . .even after the city itself withdrew initial actions against clients in 30 per cent of [the fair hearings]. . . ." N.Y. Times, Oct. 17, 1975, p.15, col. 2.

Claims, 59 Cornell L.Rev. 772, 814 (1974); Comment, *Due Process and the Right to A Prior Hearing in Welfare Cases*, 37 Ford.L.Rev. 604, 610 (1969).

In addition, "intense public and political pressures to 'cut costs' have had the pernicious effect of forcing welfare departments to be both oversensitive to keeping persons off relief rolls and in not allowing the agencies to improve their internal administrative practices." Comment, *Due Process and the Right to a Prior Hearing in Welfare Cases, supra* at 610-611 (1969), citing United States Department of Health, Education and Welfare, *Report of the Advisory Council on Public Welfare* 73 (1966); F. Piven and R. Cloward, *Regulating the Poor: The Functions of Public Welfare* 147-156 (Vintage 1972).[91]

---

[91]The Administrator of the New York City Human Resources Administration has recently recognized this political pressure to refuse assistance to needy persons:

> "I am in the process of revamping restrictive policies from an earlier administration that, I fear, were designed to support 'Zero Caseload Growth.' For example, in the monthly management reports of the Division of Eligibility Controls, those Centers with the highest rejection and closing rates have been getting the highest performance grades. Those with the highest growth rate, the lowest mark—without regard to either demographic changes or the quality of case management. . . .
>
> It is just such an attitude, reflected both in administrative practices and society at large, that must be changed. For it is quite possible that our current welfare policies and practices are creating as much or more suffering on the part of the really poor than at any time in our history. . . . The key question to be asked . . . is: *What's happening to those people?* Were these rejections valid? Are they indeed surviving without assistance, or have they already fallen below the netherworld boundary of marginal existence that is public welfare? Without money and without services?" J. Dumpson, Address to the American Public Welfare Association Northeast Regional Conference, September 6, 1974. (Emphasis in original).

This speech was entered into evidence as Plaintiffs' Exhibit No. 39 during trial in *Perez v. Lavine*, (S.D.N.Y. 73 Civ. 4577, filed October 20, 1973).

The probability of initial error is particularly great in the instant case since the crucial fact is the subjective purpose that a person had for leaving his job up to two and one half months before the date of application for public assistance. Unlike some facts, such as family composition, income, and residence, which are objective and capable of easy verification, subjective purpose, like the issue of fault in *Bell v. Burson*, 402 U.S. 535, 540 (1971), "is a factual issue inherently subject to factual determination and adversarial input." *Mitchell v. W.T. Grant*, 416 U.S. 600, 617 (1974). See generally, *Goldberg v. Kelly*, 397 U.S. 254, 269-270 (1970); *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959).[92] The high risk of error is substantiated by the fact that of the twenty one persons sanctioned whose cases were before the district court, not one left his or her job for the purpose of qualifying for public assistance.

The high risk that the local agency, acting on the basis of presumed facts, will err in determining subjective purpose, coupled with the severe harm that results from a forfeiture of public assistance, requires that defendant afford plaintiffs an opportunity to rebut the presumption at a hearing which is determined *prior* to the imposition of the seventy-five day sanctions.

---

[92]Compare New York's procedures with the two step hearing procedure and sixty day "cooling off" period before termination of AFDC benefits for a person who refused to register for WIN, or accept employment or training. 42 U.S.C. §633(g); 29 C.F.R. §570.0 et seq.; 45 C.F.R. §205.1.

Goldberg v. Kelly, 397 U.S. 254 (1970); O'Neil, *Of Justice Delayed and Justice Denied: The Welfare Prior Hearing Cases*, The Supreme Court Review, 171 (1970).

Since defendant already affords hearings to persons denied assistance pursuant to the challenged statute, *N.Y. Social Services Law*, §166; 18 N.Y.C.R.R. §358.4, the only administrative burden to the Department of Social Services is that which would result from rendering hearing determinations prior to the imposition of sanctions. This furthers rather than conflicts with New York's interest in carrying out its public assistance program. *Goldberg v. Kelly, supra* at 264-26. *See also Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729 (1975); *Jiminez v. Weinberger*, 417 U.S. 628, 636 (1974); *Stanley v. Illinois*, 405 U.S. 645, 652 (1972).[93] In *Goldberg*, this Court observed that "the very existence of New York's fair hearing procedures for its Home Relief program is itself cogent evidence that the State recognizes the primacy of the public interest in correct eligibility determinations and therefore in the provision of procedural safeguards." *Goldberg v. Kelly, supra* at 266.

This Court has long recognized that important interests may be taken and severe harm may result from unreasonable delay in the determination of a hearing. *Smith v. Illinois Bell Telephone Co.*, 270 U.S. 587 (1926). Plaintiffs suffered grave and irreparable harm from the enforcement of the challenged presumption.

[93]The paramount State interest of aiding needy persons is expressed in the New York Constitution, Art. XVII, §1 which provides that "the aid, care and support of the needy are public concerns and shall be provided by the state and by such of its subdivisions, and in such manner and by such means, as the legislature may from time to time determine."

This harm could have been avoided if they had been afforded hearings and determinations prior to the imposition of the seventy-five day sanctions.[94]

C. Because of the State's Failure to Provide Plaintiffs With Timely Hearings, The Statutory Rebuttable Presumption Operated As A Conclusive Presumption During The Seventy-Five Day Sanction Period.

Because of defendant's failure to afford plaintiffs a hearing and determination prior to the imposition of the sanctions and during the seventy-five day sanction period, the statutory presumption, which is rebuttable on its face, operated as a conclusive presumption generally well into and sometimes even after the sanction period. For a statutory presumption to satisfy the requirements of the Due Process Clause, it "must not, under the guise of regulation of the presentation of evidence, operate to preclude the party from the right to present his defense to the main fact ... presumed." *Mobile, J. & K.C. R.R. v. Turnipseed*, 219 U.S. 35, 43 (1910). *Cf. Adler v. Board of Education*, 342 U.S. 485, 495 (1952) where the Court stated that "[t]he presumption is not conclusive but arises only at a

[94]This is a context in which "justice delayed [is] justice denied." *Arnett v. Kennedy*, 416 U.S. 134, 221 (1974) (Marshall, J., Douglas, J. and Brennan, J., dissenting).

hearing where the person against whom it may arise has full opportunity to rebut it."

In several recent cases, this Court has held that where important interests are at stake, the state may not conclusively presume facts that are "not necessarily nor universally true in fact," *Vlandis v. Kline*, 412 U.S. 441, 452 (1973), but must provide the private party with a meaningful opportunity to show the actual facts. *Cleveland Board of Education v. La Fleur*, 414 U.S. 632, 644-645 (1974); *United States Department of Agriculture v. Murry*, 413 U.S. 508 (1973); *Vlandis v. Kline, supra; Stanley v. Illinois*, 405 U.S. 645 (1972); *Bell v. Burson*, 402 U.S. 535 (1971). *See also Jimenez v. Weinberger*, 417 U.S. 628 (1974).

The interest at stake, representing the very means to subsist, is greater than the interests at stake in *Vlandis, Murry, Jimenez*, and *Bell. Goldberg v. Kelly, supra.*[95] The fact conclusively presumed, termination of employment for the specific purpose of qualifying for public assistance, is a fact which the State, by the very terms of the contested statute and regulation, "purports to be concerned with. . . ." *Vlandis v. Kline*, 412 U.S. 441,

[95]In *Vlandis v. Kline, supra* at 461 n., Chief Justice Burger dissenting, stated: "If appellees' chances of securing higher education were truly in jeopardy as a result of the tuition differential at issue here, there would at least be an arguable basis for special concern, . . . [I] find it impossible to understand why the interest of appellees here amounts to any more or any less than the number of dollars they are required to pay in excess of Connecticut's in-state tuition rate."

446-447 (1973.[96] While the New York Constitution and Social Services Law purports to be concerned with meeting the needs of its indigents[97], and while the contested statute itself purports to impose sanctions only on those persons who *in fact* terminate their employment for the purpose of qualifying for public assistance, *N.Y. Social Services Law*, §131(11), the State Commissioner and his agents generally conclusively presumed during the entire seventy-five day period that employment termination was for the specific purpose of attaining public assistance eligibility.

The State Commissioner has a "reasonable and practicable means" of making the crucial determination. *Vlandis v. Kline*, 412 U.S. 451-452 (1973). The State has a fair hearing procedure which is available to all persons adversely affected by actions of the State Commissioner's agents. 18 N.Y.C.R.R. §358.4. The State can further its interests as well as the interests of its needy citizens by scheduling its fair hearings and rendering determinations prior to the imposition of the seventy-five day sanctions. In this manner, the State will only deny assistance to those persons who *in fact*

[96]In *La Fleur* and *Stanley*, the state purported to be concerned with fitness, in *Murry* with need, in *Vlandis* with bona fide residency, and in *Bell* with fault. *Bell v. Burson*, 402 U.S. 535, 541 (1971); *Vlandis v. Kline, supra*, at 446-447; *United States Department of Agriculture v. Murry*, 413 U.S. 508, 516 (1973) (Stewart, J., concurring). The presumed fact in the instant case is certainly "not necessarily nor universally true in fact." *Vlandis v. Kline*, 412 U.S. 441, 452 (1973). In addition, as in *Vlandis*, the fact is conclusively presumed during the crucial time period.

[97]*N.Y. Constitution*, Art. XVII, §1; *New York Social Services Law*, §§131(1); 131-a(1); 157; 158. (McKinney Supp. 1974)

terminated employment in order to qualify for assistance. While "[p]rocedure by presumption is always cheaper and easier than individualized determination," "the Constitution recognizes higher values than speed and efficiency." *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1973).[98]

The statute involved in *Weinberger v. Salfi*, 95 S.Ct. 2457 (U.S. 1975) is significantly different from the statute herein. In *Weinberger*, the challenged provision was "an objective criterion" that did not purport to be rebuttable but operated as a "fixed, prophylactic" rule. *Id.* at 2470, 2472.[99] In contrast to the provision in *Weinberger*, the statute in this case deals with a subjective purpose which the statute expressly purports to be determined on a case by case basis. In addition, the "administrative difficulties" that would result in *Weinberger* if the Department of Health, Education and Welfare, a national agency, had to replace its broad policy with case by case determinations "justified the

[98]The difficulty of determining factual issues does not justify the use of a conclusive presumption. *Carrington v. Rash*, 380 U.S. 89 (1965) (bona fide residence); *Cleveland Board of Education v. La Fleur*, 414 U.S. 632 (1974) (medical fitness); *Vlandis v. Kline*, 412 U.S. 441 (1973) (bona fide residence).

[99]The fact that a provision is designed to be a "prophylactic" device is not, by itself, sufficient to justify the use of a conclusive presumption. The rules held unconstitutional in *Vlandis*, *Murry*, and *Jimenez* were, like the challenged provision herein, "measure(s) of social opprobrium; the assumption that the individual has purposely undertaken to evade legitimate requirements." *Weinberger v. Salfi*, *supra* at 2486 (Brennan, J. and Marshall, J. dissenting). *See also*, *Carrington v. Rash*, 380 U.S. 89 (1965). *Cf. Mourning v. Family Publications Service, Inc.*, 411 U.S. 356, 376 (1973).

inherent imprecision of a prophylactic rule." *Id.* at 2473, 2476. See *Richardson v. Perales*, 402 U.S. 389, 399 (1971) (Social Security Administration is "of a size and extent difficult to comprehend.")[100] In contrast to the situation in *Weinberger*, New York has not alleged an interest in avoiding individual adjudications, and indeed purports to make case by case determinations of why people leave their jobs. The governmental interest in avoiding individual adjudications, which justified the challenged policy in *Weinberger*, is thus not present in the instant case.

This Court has consistently held that administrative convenience is not a sufficient justification to dispense with minimal due process protections. *Stanley v. Illinois*, 405 U.S. 645, 656-657 (1972); *Bell v. Burson*, 402 U.S. 535, 540-541 (1970); *Goldberg v. Kelly*, 397 U.S. 254, 261, 265-266 (1970). Just as the "additional expense occasioned by [an] expanded hearing [was not] sufficient to withstand" due process requirements in *Bell v. Burson, supra*, it is not sufficient to justify defendant's failure to afford plaintiffs timely hearings and determinations in this case.[101] "[T]he admin-

[100]The provision in *Weinberger* also operated within relatively narrow confines in view of the numerous statutory exceptions to the challenged provision. In the instant case, the presumed purpose applies to *all* persons who terminate employment within seventy-five days of welfare application.

[101]Where the determination after a fair hearing is that a person in fact terminated his employment in order to qualify for public assistance, the State can recoup the payments made during the sanction period from future grants. *N.Y. Social Services Law*, §106-b (McKinney Supp. 1974).

istrative agency certainly has the power to [provide] a speedy hearing" procedure. *Arnett v. Kennedy*, 416 U.S. 134, 193 (1974) (Mr. Justice White, concurring in part and dissenting in part). When the harm to the individual and the probability of error in the decision making process is balanced against the State's administrative inconvenience, it is clear that Due Process requires a hearing prior to the imposition of the seventy-five day sanction.

III.

THE IMPOSITION OF A SEVENTY-FIVE DAY SANCTION ON THE BASIS OF PRESUMED FACTS IS ARBITRARY AND IRRATIONAL IN VIOLATION OF THE EQUAL PROTECTION CLAUSE.

Plaintiffs contend that the imposition of the sanctions on the basis of the statutory presumption that they terminated their employment for the purpose of qualifying for public assistance, without an opportunity to rebut it prior to the imposition of the sanction and generally during the entire seventy-five day sanction period, is arbitrary and irrational in violation of the Equal Protection Clause.

The New York State Department of Social Services generally purports to make a careful investigation, evaluation and determination of the actual facts concerning each applicant's eligibility for public assistance. *N.Y.Social Services Law*, §132; 18 N.Y.C.R.R. Parts 351 and 352. See Brief for Appellant,

pp. 44-45.[102] Careful case by case determinations are made of identity, residence, family composition, need, income resources, and employment history. 18 N.Y.C.R.R. §§351.2, 352.11, 352.12, 352.15, 352.16, 352.17, 352.19.

All persons who apply for public assistance in New York, regardless of their physical and mental traits, their work history, and their educational background, except those in the plaintiff class, may apply for assistance unhindered by any statutory presumption.[103] Thus, for example, people who are perfectly capable of working but have chosen not to work for the past several years, for whatever reason, can apply for assistance free of a statutory presumption of any

---

[102] The State regulations define investigation as "the collection, verification, recording and evaluation of factual information on the basis of which a determination is made of eligibility and degree of need, or of ineligibility, for any form of public assistance." 18 N.Y.C.R.R. §351.1(a). *New York Social Service Law*, §132 (McKinney Supp. 1974) provides in part that "the object of such investigations shall be to secure the facts necessary to determine whether such person is in need of public assistance. . . . Information shall be sought as to the residence of such person, the name, age, religious faith, physical condition, earnings or other income, and ability to work of all members of the family, the cause of the person's condition, the ability and willingness of the family, relatives, friends and church to assist, and such other facts as may be helpful in determining the treatment which will be helpful to such person."

[103] An exception is that persons who transferred property within one year preceding the date of application for assistance are presumed to have transferred the property for the purpose of qualifying for assistance. *N.Y. Social Services Law*, §§104-a; 158(b) (McKinney Supp. 1974). *See, Owens v. Roberts*, 377 F. Supp. 45 (M.D. Fla. 1974) (three judge court).

motive that they seek to avoid work and obtain welfare. In sharp contrast, needy persons, such as plaintiffs, who may have worked all their lives but who terminated their employment within seventy-five days of their applications for public assistance are singled out for the imposition of sanctions of a seventy-five day denial of assistance based on the *presumption* that they left their employment for the purpose of qualifying for assistance.[104] This procedural disparity is arbitrary and irrational in relation to the purposes of the State's public assistance program and thus violates the Equal Protection Clause.

Plaintiffs do not challenge the general power of the State to deny assistance to persons who *in fact* terminate their employment for the purpose of qualifying for public assistance. *Cf. New York State Department of Social Services v. Dublino*, 413 U.S. 405 (1973). Plaintiffs only claim that the State's imposition of a sanction based on assumed rather than actual facts violates the Equal Protection Clause. As this Court stated in *Stanley v. Illinois*, 405 U.S. 645, 652 (1972):

> "E.t we are here not asked to evaluate the legitimacy of the state's ends, rather, to determine whether the means used to achieve these ends are constitutionally defensible."

Where a governmental agency generally makes case by case fact findings to support its determinations, it cannot, consistent with the Equal Protection Clause,

---

[104] As set forth in Point II, *supra*, while the statutory presumption is, on its face, rebuttable, it operates so as to conclusively presume the vital fact generally during the entire seventy-five day sanction period.

arbitrarily and irrationally single out one class of persons and make their determinations based on conclusively assumed facts. *Jimenez v. Weinberger*, 417 U.S. 628, 635-637 (1974); *Frontiero v. Richardson*, 411 U.S. 677 (1973); *Stanley v. Illinois*, 405 U.S. 645 (1972); *Reed v. Reed*, 404 U.S. 71 (1971). *See also United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973). This is so whether or not the procedures the State affords the favored class are required by the Due Process Clause. *Lindsey v. Normet*, 405 U.S. 56, 77 (1972) (imposition of double appeal bond to appeal from judgment of eviction violates the Equal Protection Clause even though there is no due process right to an appeal). *Cf. Baxstrom v. Herold*, 383 U.S. 107 (1966).

The critical inquiry is whether the denial of benefits to needy persons on the basis of an assumed wrongful motive is rationally related to New York's legitimate interests in carrying out its public assistance programs. *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 534-537 (1973); *Jimenez v. Weinberger*, 417 U.S. 628, 636 (1974); *Reed v. Reed*, 404 U.S. 71, 75-76 (1971). Compare *Weinberger v. Salfi*, 95 S. Ct. 2457 (1975).

The legislative history of New York Social Services Law §131(11) (McKinney Supp. 1974) states that the purpose of this section is to deter and remove "any potential incentive" for people who are working from leaving their employment for the purpose of qualifying for public assistance. *See* 2 McKinney, New York Session Laws of 1971, p. 2511; Brief for Appellant, p. 8; Jurisdictional Statement, p. 21. Regardless of the rationality of imposing two and one half month denial sanctions pursuant to the first sentence of Section

131(11), the utilization of an assumption that persons leave their employment for the purpose of qualifying for assistance is not rational. *See Stanley v. Illinois*, 405 U.S. 645 (1972).[105]

Indeed, the State spites its own purpose of assisting needy persons when it denies assistance to a needy person who did not *in fact* leave his job in order to qualify for assistance. See Point II, *supra*, at 106, 109-110. *Goss v. Lopez*, 419 U.S. 565, 95 S.Ct. 729, 739 (U.S. 1975); *Jimenez v. Weinberger*, 417 U.S. 628, 636 (1974); *Stanley v. Illinois*, 405 U.S. 645, 652 (1972); *Goldberg v. Kelly*, 397 U.S. 254, 264-265 (1970). The State statutory-regulatory scheme detailing the extensive efforts the State makes in determining the actual facts of its present and potential recipients "is itself cogent evidence that the State recognizes the primacy of the public interest in correct eligibility determinations and therefore in the provision of procedural safeguards." *Goldberg v. Kelly*, *supra* at 266. The imposition of a sanction that is based on assumed facts which deprives needy persons of assistance is clearly counter to this interest. This is substantiated by the facts of the several plaintiffs, none of whom in fact quit their job in order to qualify for assistance, but all of whom suffered severe harm because they were assumed to have done so.

---

[105] By defendant's own admission, the asserted State interests set forth on page 22 of his Brief relate only to the first sentence of Section 131(11) (McKinney Supp. 1974), which is not in issue. Brief for Appellant, p. 22. *See, Milne v. Berman*, 384 F. Supp. 206, 212 (S.D.N.Y. 1974); *Owens v. Roberts*, 377 F. Supp. 45, 51 (M.D.Fla. 1974) (three-judge court).

Analogous situations were presented in *Jiminez v. Weinberger*, 417 U.S. 628 (1974) and *United States Department of Agriculture v. Moreno*, 413 U.S. 528 (1973). In *Jimenez*, the challenged statute denied Social Security disability benefits to certain illegitimate children who were born after the date of disability, the assumption being that such children were not likely to be dependent on the claimant. This Court held that the statute violated the equal protection principles embodied in the Due Process Clause of the Fifth Amendment. The Court stated:

> "Assuming that the appellants are in fact dependent on the claimant, it would not serve the purposes of the Act to conclusively deny them an opportunity to establish their dependency and their right to insurance benefits. . . ." *Jimenez v. Weinberger*, *supra* at 636.

In *Moreno*, the challenged statute, which denied food stamps to households containing one or more unrelated members, was claimed by the government to be justified by its purported purpose to minimize fraud. The government claimed that households with unrelated members were more likely than households where all members were related "to contain individuals who abuse the program by fraudulently failing to report sources of income or by voluntarily remaining poor and . . . that such households are 'relatively unstable,' thereby increasing the difficulty of detecting such abuses." *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 535 (1973).[106]

---

[106] Here, the State only argues that "*some* employable persons may voluntarily terminate their employment" in order to obtain assistance. Brief for Appellant, p. 8 (Emphasis added).

This Court rejected this purported justification and held that the statute violated the equal protection principles of the Fifth Amendment's Due Process Clause. The Court stated:

> "But even if we were to accept as rational the Government's wholly unsubstantiated assumptions concerning the differences between 'related' and 'unrelated' households, we still could not agree with the Government's conclusion that the denial of essential federal food assistance to *all* otherwise eligible households containing unrelated members constitutes a rational effort to deal with these concerns." *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 535-536 (emphasis in original)

The rationale of *Jimenez* and *Moreno* is applicable to the instant case. The device of the statutory presumption of a wrongful purpose for employment termination does not constitute a "rational effort" to deny public assistance only to persons who in fact leave their jobs for the purpose of qualifying for public assistance. First, while the statutory presumption is rebuttable on its face, it is clear from the record that plaintiffs actually had no opportunity to rebut the presumption when they applied for assistance, prior to the imposition of the sanctions, and generally during the entire seventy-five day sanction period. See Point II, *supra*. There is no evidence that any of these persons in fact left their employment in order to qualify for assistance.[107] It is simply irrational for the

[107] The denial of assistance based on a presumed rather than actual wrongful purpose for terminating employment conflicts with the "basic concept of our system that legal burdens should bear some relationship to individual responsibility or wrongdoing." *Weber v. Aetna Casualty and Surety Co.*, 406 U.S. 164, 175 (1972); *Felton v. United States*, 96 U.S. 699, 703 (1878) (To inflict a penalty where there is no culpability "would shock the sense of justice of everyone."). *Accord, Great Atlantic & Pacific Tea Co. v. Ervin*, 23 F. Supp. 70, 82 (D. Minn. 1938) (three-judge court) (Sanborn, J.).

State to impose sanctions and deny large numbers of needy persons badly needed assistance on the basis of presumed facts, and to only attempt to determine the actual facts after the termination of the sanction period, and after the harm has been done.

In *Owens v. Roberts*, 377 F. Supp. 45 (M.D. Fla. 1974) a three-judge court held that a statutory rebuttable presumption that certain transfers of property were made for the purpose of qualifying for welfare benefits, which was rendered conclusive in operation, created "a patently invidious discrimination" in violation of the Equal Protection Clause. *Id.* at 51. The court determined that:

> "(t)he arbitrariness and irrationality of this conclusive and automatic attribution of fraudulent intent without considering such factors as economic coercion, ignorance or the good faith of the claimant plainly flies in the face of the altruistic purpose underpinning welfare legislation." *Id.* at 52.

This rationale is directly applicable to the instant case.

The State has other means available which it could employ to rationally deny assistance to persons who in fact terminated their employment in order to qualify for public assistance. See *United States Department of Agriculture v. Moreno*, 413 U.S. 528, 536-537 (1973).

First, these determinations can certainly be made on the basis of neutral fact finding without the utilization of any presumption. As defendant himself states, "This determination would have to be made even if the district court opinion were affirmed. . . ." Brief for Appellant, p. 47. *Accord*, A. 449. A post-judgment administrative letter issued by a Deputy Commissioner

instructed all local commissioners that they must determine whether a person "has *in fact* quit his employment for the purpose of qualifying for such assistance. . . ." (A. 632) (emphasis in original). A pre-judgment informational letter set forth some of the factors which are relevant in making this determination. (A. 455). A person's motive in terminating employment can be inferred from such facts as a person's employment history, terms and conditions of employment, efforts to adjust employer-employee differences, reasons given for job termination, and efforts to find new work or other means of support prior to seeking assistance. *Cf. Hawk v. Fenner*, 396 F. Supp. 1, 8 (D.S.D. 1975) (relevant factors to make case by case determinations of bona fide residence for welfare eligibility).

In addition, assuming *arguendo* that the State has a legitimate interest in utilizing a presumption, the State can further its interests as well as the interests of its needy citizens by limiting the use of the presumption to a hearing, and by determining that a person in fact terminated his employment for the purpose of qualifying for public assistance prior to the imposition of a sanction. *Cf. Adler v. Board of Education*, 342 U.S. 485, 495 (1952).

The State's "mere objective" of eliminating a timely and meaningful fact finding procedure with respect to persons sanctioned under the challenged statute is "the very kind of arbitrary legislative choice" forbidden by the Equal Protection Clause. *Reed v. Reed*, 404 U.S. 71, 76 (1971). The administrative burden and expense of modifying its procedures to ensure that the only persons sanctioned are those who in fact left their jobs

in order to qualify for assistance cannot serve as a rational justification for depriving plaintiffs of meaningful factual determinations. *Frontiero v. Richardson*, 411 U.S. 677, 690-691 (1972); *Stanley v. Illinois*, 405 U.S. 535, 540-541 (1970); *Goldberg v. Kelly*, 397 U.S. 254, 261, 265-266 (1970).[108]

The fact that there is no legitimate state interest to support the use of the presumption is made clear by the inconsistent positions taken in the Brief for Appellant. At one point, the State Commissioner argues that the presumption is necessary because otherwise "it would be virtually impossible" for the agency to determine why a person left his job. Brief for Appellant, p. 30. On the other hand, defendant states that "the presumption contained in NYSSL §131(11) McKinney Supp. 1974 merely clarifies the duty of the applicant to introduce evidence of his purpose in voluntarily terminating his employment. . . ." Brief for Appellant, p.. 51. Moreover, defendant concedes that if the district court judgment is affirmed, he will be able to make case by case determinations of the purpose of job termination. Brief for Appellant, p. 47. (A. 632). Finally, defendant conceded in the court below that "the actual practical effect to the State is unknown at this time, the effect of the presumption as opposed to findings of fact." (A. 690).

---

[108] *Weinberger v. Salfi*, 95 S.Ct. 2457 (1975) is distinguishable in this respect. In *Weinberger*, the Court relied in part on the significant "administrative difficulties" that would result if a federal agency had to substitute case by case determinations for its present policy rule. *Id.* at 2476. Under these circumstances, the Court concluded that "any imprecision . . . was justified by . . . ease and certainty of operation." *Id.* at 2474. In the instant case, New York purports to make case by case determinations of why a person left his job.

In sum, it was irrational for the State to impose sanctions on persons who terminated their employment based on the assumption that they terminated their employment for the purpose of qualifying for assistance.

IV.

THE CLASS SHOULD BE MODIFIED TO EXCLUDE PERSONS IN THE AFDC CATEGORY

The named plaintiff, plaintiff-intervenors, and the other persons who participated in the proceedings before the court below were all applicants for Home Relief assistance. *N.Y. Social Services Law*, §158 (McKinney Supp. 1974). Defendant claims that the court below improperly included applicants for Aid to Families With Dependent Children (A.F.D.C.) assistance in the plaintiff class. Plaintiffs agree with defendant that the class should be modified so as to exclude those in the A.F.D.C. category, although not for the same reason set forth by defendant.

Defendant represented to the court below that "there are very few, if any, persons receiving A.F.D.C. who are directly affected. . . ." (A. 693. *Accord*, A. 691). Any person in the A.F.D.C. category who would be affected by the enforcement of the contested statutory presumption would have a substantial claim that the state statutory presumption conflicts with the Social Security Act. 42 U.S.C. §§601, *et seq. Shea v. Vialpando*, 416 U.S. 251 (1974); *Carleson v. Remillard*, 406 U.S. 598 (1972); *Lewis v. Martin*, 397 U.S. 552 (1970); *King v. Smith*, 392 U.S. 309 (1968). Ordinarily, the district court is required to reach this claim prior to

resolving the constitutional claim. *Hagans v. Lavine*, 415 U.S. 528 (1974).

The Social Security Act claim was neither raised nor argued in the court below, or by the defendant in this Court. Under these circumstances, and particularly in light of the representation of defendant that few, if any, A.F.D.C. persons are affected by the contested statute, the class should be limited to persons in the Home Relief category. Fed.R. Civ.P. 23 (c)(1)(4).

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the three-judge court should be modified to exclude applicants for Aid to Families With Dependent Children from the plaintiff class, and that in all other respects the judgment of the three-judge court should be affirmed.

October 15, 1975.

Respectfully submitted,

GERALD A. NORLANDER
MARTIN A. SCHWARTZ
The Legal Aid Society of
Westchester County
56 Grand Street
White Plains, New York 10601
Tel: (914) 761-9200
Attorneys for Appellees

Counsel for appellees gratefully acknowledge their appreciation for the assistance of Mark Imber and Kitty Huebbe in the preparation of this Brief.

Appendix "A"

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of
ALLEN PHILLIPS

DECISION AFTER FAIR HEARING

from a determination by the Westchester County Department of Social Services (hereinafter called the agency)

A fair hearing was held at White Plains, New York, on April 4, 1974, before, William Gorton, Hearing Officer, at which the appellant, the appellant's representative and representatives of the agency appeared. The appeal is from a determination by the agency relating to the denial of an application for home relief. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) The appellant applied for public assistance, and the agency denied the appellant's application on March 8, 1974.

(2) The appellant was employed, and his employment was terminated due to his being tardy on one occasion, and for the addition reason that the employer claimed he wasn't dressed properly for his job.

(3) The appellant has in the past worked for the same employer and the employer never complained about his clothing.

(4) The appellant was only late on one occasion when he missed his train.

Section 385.7(a)(1) of the Regulations provides for the discontinuance or denial of assistance where there is a voluntary termination of employment for the purpose of qualifying for assistance. The record establishes that the appellant did not provoke his discharge for the purpose of qualifying for public assistance.

DECISION: The determination of the agency is not and cannot be affirmed. The agency is directed to take appropriate action in accordance with the foregoing decision pursuant to the provisions of Section 358.22 of the Regulations of the State Department of Social Services.

DATED: Albany, New York

/s/Abe Lavine
Abe Lavine
COMMISSIONER

By Carmen Shang

Appendix "B"

STATE OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

In the Matter of the Appeal of

SHIRLEY MILLER

DECISION AFTER FAIR HEARING

from a determination by the Dutchess Department of Social Services (hereinafter called the agency)

A fair hearing was held at Poughkeepsie, New York, on February 19, 1974, before John Burke Hearing Officer, at which the appellant, the appellant's representative and representative of the agency appeared. The appeal is from an agency denial of an application for home relief. An opportunity to be heard having been accorded all interested parties and the evidence having been taken and due deliberation having been had, it is hereby found:

(1) Appellant, age 35, resides alone.

(2) On January 14, 1974, appellant applied for public assistance; her application was denied on the basis that she had provoked her discharge and thus voluntarily terminated employment with the purpose of qualifying for public assistance.

(3) On December 14, 1973, the appellant was fired from her job for being undependable in that her work attendance had been irregular.

(4) Appellant became pregnant in November of 1973; her pregnancy was terminated on December 28, 1973.

Section 131(10) of the Social Services Law provides that a person who voluntarily terminate employment shall be ineligible for public assistance for 75 days unless otherwise required by Federal Regulation. In this case the agency determined that the appellant had provoked her discharge and therefore was subject to such a sanction. The record, however, clearly established that during the period in which appellant was absent from work, she was under emotional strain and was in the initial stage of pregnancy and did not voluntarily provoke her discharge. The determination of the agency, therefore, was incorrect. The agency determination to deny appellant's application is reversed; the agency is directed to issue a grant of assistance to appellant retroactive to the date of application and to issue a grant thereafter in accordance with verified need.

DECISION: The determination of the agency is not and cannot be affirmed. The agency is directed to take appropriate action in accordance with the foregoing decision pursuant to the provisions of Section 358.22 of the Regulations of the State Department of Social Services.

DATED: Albany, New York

/s/Abe Lavine
Abe Lavine
COMMISSIONER

By Carmen Shang
Carmen Shang
ASSISTANT COMMISSIONER

APPENDIX "C"

STATE OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES
1450 Western Avenue
Albany, New York 12203

Administrative Letter	Transmittal No.:	74 ADM-186
	Date:	Dec. 24, 1974
To:	Commissioners of Social Services	
Subject to:	Clarification of 74 ADM-181 Sanctions for Voluntarily Terminating Employment Milne, et al v. Lavine, et al	
Suggested Distribution:	All Public Assistance Staff	

At a hearing before Judge Wyatt, USDC:SDNY on December 19, 1974, it was indicated by the court that Administrative Letter 74 ADM-181 issued December 18, 1974 could possibly be improperly interpreted. Therefore, in order to avoid any misunderstanding, you are instructed as follows:

You are not to deny, discontinue, or reduce assistance in the Aid to Dependent Children or Home Relief programs unless you find from all available evidence as a *fact* that the applicant or recipient has quit his or her employment for the purposes of qualifying for assistance or a greater amount thereof.

The Judge at this same hearing ORDERED in addition to the Judgment of December 13, 1974

> "* * * that a letter be sent on or before January 6, 1975, to all those members of the class denied *home relief* assistance since November 12, 1974 advising such members that they may reapply for such assistance retroactive to November 12, 1974 and are free to ask for legal advice as they may see fit * * *"

The class consists of all persons who were and may have been denied *Home Relief* between November 12, 1974 and December 13, 1974 by the imposition of the 75 day sanction under New York Social Services Law, §131(11) (McKinney Supp. 1974) and 18 N.Y.C.R.R. §385.7.

This means you are to review the files and send letters no later than January 6, 1975 in accordance with the Order of the Court as above indicated. Local Commissioners should report compliance with the Order of the Court by completing and returning the form attached.

/s/[Illegible]
Deputy Commissioner

FILING REFERENCE

SSL 131(11)	Bulletin
Dept.Regs. 385.7(b)	26
Inf. Letter–74 INF-19	

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Supreme Court, U. S.
FILED
NOV 26 1975
MICHAEL RODAK, JR., CLERK

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellant
Two World Trade Center
New York, New York 10047
Tel. (212) 488-3443

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

AMY JUVILER
Assistant Attorney General
of Counsel

TABLE OF CONTENTS

PAGE

I—The validity of the statute on its face is the sole issue on this appeal as it was the sole issue decided by the Court below and the sole issue which could be determined on summary judgment 1

II—Appellees have failed to prove that there is no rational connection between the facts proven—voluntarily termination of employment and subsequent application for public assistance—and the fact presumed—a purpose to qualify for public assistance. Indeed, there is a close logical relationship sufficient to sustain the rebuttable presumption 8

III—Appellees have not proven their claims of denial of due process of law—that review of denial of assistance to them should take precedence over other fair hearings, that they are entitled to receive assistance after it has been denied or that they have no opportunity to rebut the presumption at the local agency 18

Conclusion 22

Appendix A 23

TABLE OF AUTHORITIES

Cases:	PAGE
Adler v. *Board of Education*, 342 U.S. 485 (1952) ..	2
Arteaga v. *Silverman*, 56 Wis. 2d 110, 201 NW2d 538 (Sup. Ct. Wis. 1972)	16-17
Barr v. *Matteo*, 355 U.S. 171 (1957)	6
Daniel v. *Galiday*, 398 U.S. 73 (1970)	21
Gaddis v. *Wyman*, 304 F. Supp. 717 (N.D.N.Y. 1969), *aff'd sub nom. Wyman* v. *Bowers*, 397 U.S. 49 (1970)	16
Garcia v. *Silverman*, 393 F. Supp. 590 (E.D. Wis. 1975)	16, 17
Goldberg v. *Kelly*, 397 U.S. 254 (1970)	21
Greer v. *United States*, 245 U.S. 559 (1918)	16
Jones v. *Berman*, 37 NY 2d 42, 371 N.Y. Supp. 2d 422 (1975)	20
Leary v. *United States*, 395 U.S. 6 (1969)	15
Logue v. *United States*, 412 U.S. 521 (1973)	6
McDonald v. *Board of Election Commissioners*, 394 U.S. 802 (1969)	16
Mobile, J. & K. C. R.R. v. *Turnispeed*, 219 U.S. 35 (1910)	7, 8
New York State Department of Social Services v. *Dublino*, 413 U.S. 405 (1973)	14, 16
Northern Pacific Railway Co. v. *Concannon*, 239 U.S. 382 (1915)	6-7
Phillips Chemical Co. v. *Dumas Independent School District*, 361 U.S. 376 (1960), *reh. den.* 362 U.S. 937	7

	PAGE
Shapiro v. *Thompson*, 394 U.S. 618 (1969)	16
Swanson v. *Traer*, 354 U.S. 114 (1957)	6
United States v. *Arnold Schwinn & Co.*, 388 U.S. 365 (1967)	7
United States v. *Rice*, 327 U.S. 742 (1946)	7
Vlandis v. *Kline*, 412 U.S. 441 (1973)	17
Wyman v. *James*, 400 U.S. 309 (1971)	2
Statutes and Regulations	
26 U.S.C.A. § 2035	15
42 U.S.C.A. § 602(a)(19)	14
NYSSL § 131(11)	*passim*
NYSSL § 158(a)	9
Ariz. Revised Stats. Vol. 15 § 46-233(A)(3)	9
Dela. Code, Title 31 § 503(a)	9
Hawaii Revised Stats., 1974 Suppl't, Vol. 4, Titles 16-21, Chs. 281-400 § 346-71(1)	9
44 N.J. Stats. Ann. § 13-3(a)	9
Code of Va., Vol. 9A, 1975 Suppl't § 63.1-133.12	10
Rules of the United States District Court for the Southern District of New York, Rule 9(g)	2
18 NYCRR § 358.28	20
75 N.Y. St. Dep't of Social Services Admin. Letter 78 (Aug. 8, 1975)	20

OTHER AUTHORITIES

PAGE

B. Bernstein, A. Shkuda, E. Burns, *Income Tested Social Benefits in New York Adequacy Incentive and Equity,* Studies in Welfare, Paper No. 8, Printed for the use of the Joint Economic Committee (1973 CPO #5270-01862) 12, 13

B. Bernstein, M. Rowan, A. Shkuda, *Obstacles to Employment of Employable Welfare Recipients* Center for New York City Affairs, New School for Social Research (1974) (Mimeograph) ...10-12, 14

D. Moynihan, *The Politics of a Guaranteed Income* (Vintage 1973) 9

N.Y. State Dep't of Social Services, *Statistical Supplement to Annual Report for 1973* 4-5, 10

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 74-1137

ABE LAVINE, individually and in his capacity as Commissioner of the New York State Department of Social Services,

Appellant,

against

RONALD MILNE, DOUGLAS STREETER, ROBERT C. LEE, JOE NATHAN BEVERLY, WILLIE BEVERLY, ODELL BEVERLY, and JOHN BEVERLY, by their mother and next friend, ROBERTA BEVERLY, individually and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

REPLY BRIEF FOR APPELLANT

I.

The validity of the statute on its face is the sole issue on this appeal as it was the sole issue decided by the Court below and the sole issue which could be determined on summary judgment.

Appellees' brief is largely devoted to issues not raised by this appeal. One is led to believe that the District Court after a plenary trial made detailed findings of fact about the enforcement of NYSSL § 131(11) and avail-

ability of hearings to persons denied assistance under the section. But that is not the posture of this appeal. The decision of the three-judge court was limited to a finding that the statute was invalid on its face (Op. A. 567). Furthermore that is all the Court could determine on a motion for summary judgment. There were critical issues of fact between the parties as to the general administrative experience under the statute and the fairness of the procedures for reviewing denial of assistance. See Defendant Lavine's Statement Pursuant to Local Rule 9(g) (A. 503-6).

In *Wyman* v. *James,* 400 U.S. 309, 313 (1971), this Court expressed frustration that potentially significant factual issues regarding the validity of home visits to public assistance recipients had not been resolved in a proper plenary proceeding. Similarly, Justice Frankfurter in his dissent in *Adler* v. *Board of Education,* 342 U.S. 485, 497-507 (1952), warned against the consequences of a premature determination of the validity of hearing procedures which had not yet been fully developed. Any issue other than the validity of the statute on its face presented by this complaint must be determined in the first instance by the District Court.

Appellees did present to the Court below instances in which assistance improperly was denied to applicants, but for all the outraged verbiage those denials have not been shown to have been a result of enforcement of NYSSL § 131 (11), in general, or, of the presumption at issue on this appeal. Except for Joseph Beverly, none* of the

---

* In the case of Streeter it might have been a question of fact whether his failure to appear at his job over the New Year's weekend was an absence, as he claimed, or voluntary termination as the Unemployment Insurance determination suggested (Pl. aff. Ex. A, A. 282). But the Westchester determinations stated that the Agency had found that he "was terminated" (Pl. aff. A. 278). Lee's absences also could have been construed as a voluntary termination but the County Department made no such finding (A. 72).

named plaintiffs voluntarily terminated his employment. Since § 131(11) applies only in cases where there is a voluntary termination, denial of assistance by the local agency to these plaintiffs was not pursuant to § 131(11), but in contravention of its express provisions. Similarly by its express terms the presumption at issue on this appeal only applies to an applicant who voluntarily terminates his employment. Therefore these plaintiffs were not injured by the imposition of the presumption but by a denial of assistance which ignored the express language of the presumption. They were denied assistance in spite of the statute, not because of it.

Furthermore, in some instances the statutory right to rebut was negated. While there has been no finding as to precisely what transpired in the County office on the application proceedings, the notices sent by the local agency to Milne, Streeter and Lee (Compl't. Ex. B, A. 29; Pl. Aff. Ex. A, A. 282; Pl. Aff. Ex. C, A. 72) suggest that there was no opportunity to rebut any finding. This suggestion is directly contrary to the statute. But because the denials did not rest on a finding that there was a voluntary termination of employment for the purpose of obtaining public assistance, the right to rebut the presumption which was not invoked would not be meaningful.

Therefore, these plaintiffs had a complaint—not against the statute they attacked, but against an administrative action which was repugnant to the statute. And, as egregious as these denials were, they do not support a finding that the statute on its face was invalid. The then Westchester County Commissioner, defendant Leonard Berman was represented in the District Court by the County Attorney. Because the decision below was limited to a finding on the statute and did not turn on any finding against him, defendant Berman did not appeal.

While there were too many unjustified denials of assistance, appellees have failed to show any widespread pattern

attributable to the language of the statute. It unambiguously applies only to voluntary termination of employment and the presumption is limited to those cases, as well. The presumption is also explicitly rebuttable.

Plaintiffs have shown 9 instances in which assistance was denied to persons who were fired from their jobs. In addition to the three named plaintiffs, appellees referred to the experience of Roy Levee (A. 38-48); Shirley Miller (A. 89-98); Ulysses Westbrook (A. 220-43); Anthony Brownlee (A. 296-307); Allen Phillips (A. 310-12) and Pat Scarfone (A. 313-21).* But this is not widespread misapplication of NYSSL § 131(11). Only 2 of these applicants were denied assistance outside of Westchester County: Levee in New York County and Westbrook in Monroe County. While 128,711 persons receive HR in New York City (N.Y. State Dept. of Social Services, *Statistical Supplement to Annual Report for 1973* [hereinafter *Statistical Supplement*] Table 6, row 2, column 17) the Court below was shown one case of misapplication of the statute and that was reversed by the local agency within 10 days (A. 104) by reference to the face of the statute and the local regulations (A. 456-8). Of the 4,116 persons receiving HR, in Monroe County (*Statistical Supplement,* Table 6, row 6, col. 17), the Court below was shown one case of misapplication of the statute. In the entire rest of the state in which 38,581 people receive HR (*Statistical Supplement,* Table 6, rows 3, 59, col. 17) there is no instance of misapplication of the statute. Even in Westchester 10 misapplications out of 4,672 HR cases (Statistical Summary, *supra,* Table 6, row 10, column 17) does not demonstrate a total disregard of the provisions of NYSSL § 131(11).

* Appellees referred to 7 other instances of denial introduced to protest the imposition of the presumption after the decision below was rendered, but before the Court's order was applied. All were corrected by the District Court order (A. 690). Terry Yant, Gladys Hart and Lowell Swanson admitted quitting their jobs well within 75 days of applying for assistance (A. 588, 592, 638). The record does not show whether they produced evidence to overcome the presumption at the local welfare office. No facts regarding John Hepler, James Maine or Sherry Murphy were alleged. Barbara Mankes claimed to have been fired and she was granted assistance (A. 633), but the Westchester Commissioner reconsidered the decision finding that she had provoked her discharge (A. 636). However she was entitled to assistance pending the determination at a state fair hearing which became unnecessary under the order issued by the Court in this case.

Nor did the State Commissioner acquiesce in the sporadic misapplication of the statute in Westchester County. When the pleadings in this case identified the problem, the Department issued guidelines which, by concrete examples, sought to avoid repetition of these mistakes (Def. Ex. A. 454-5; Def. aff. A, 447-8). Five of the 9 cases in which there was no justification for the denial were appealed to appellant, in each instance the State Commissioner of Social Services sustained the applicant's position: Brownlee (A. 306-7), Scarfone (A. 319-21), Miller (Apellees' Br. App. B), Streeter (A. 459-60) and Phillips (Appellees' Br. App. A). In three other cases the local agency itself, withdrew its decision: Milne (A. 505), Levee (A. 104), and Westbrook (A. 452). Robert Lee was granted assistance by the District Court in a preliminary injunction before he ever applied for state hearing and he defaulted at that hearing.

By contrast, Joseph Beverly freely admitted quitting his job and applying for public assistance four (4) days later (Pl. aff. A. 151-2, Def. Ex. "E", A. 467). Thus, the presumption was properly applied to him. At the fair hearing, the Commissioner concluded that he had quit for the purpose of qualifying for public assistance. He testified that it was not profitable to continue working (Def. Ex. "E", A. 470-1). His former employer remained willing to rehire Joseph and his brothers (Def. Ex. "E"). Ethel Reid's case was moot when she sought to intervene in this suit. She had been rehired by her former employer *and* she had been found eligible for unemployment benefits

(Pl. aff. A. 289). However, previously she had been found ineligible for public assistance in a decision which misstated the provisions of the statute and regulation to the effect that it precluded eligibility for public assistance for 75 days for one who had voluntarily terminated her employment (P. Ex. "D", A. 295). The statement excludes mention that a finding of ineligibility proceeds only from a purpose to qualify for public assistance or for a larger amount thereof. However, the presumption is not mentioned and apparently played no part in the mistaken decision.

By attacking the application of NYSSL § 131(11), appellees are attempting to convince this Court to sit as a trier of fact in the first instance and to pass upon narrow issues of statutory application which were not determined by the District Court. Indeed, they are not put in issue by the facts of the Beverly case, the only live controversy before the three-judge court.

In *Barr* v. *Matteo,* 355 U.S. 171 (1957), the Court of Appeals had affirmed a libel judgment on the ground that as a government official the defendant was not absolutely immune from libel, but it did not pass upon the defense of qualified privilege. This Court found that it was proper to pass on the narrower grounds first, but it did not rule on those grounds, itself. It remanded the appeal to consider the question of qualified privilege. In *Logue* v. *United States,* 412 U.S. 521, 532-3 (1973), the case was remanded to consider the individual liability of a deputy marshal which had not been adequately reviewed by the Court of Appeals. In *Swanson* v. *Traer,* 354 U.S. 114 (1957), a holding by the District Court on the ability of a stockholder to sue on behalf of the Corporation had not been reviewed by the Court of Appeals and for this reason the case was remanded. In *Northern Pacific Railway Co.* v. *Concannon,* 239 U.S. 382, 387-8 (1915), this Court found the decision below to have rested on a finding

of adverse possession based on an erroneous interpretation of a statute. It remanded to consider whether the possession might have occurred before the effective date of the statute. In *United States* v. *Rice,* 327 U.S. 742, 747 (1946), this Court stated that the scope of review is limited by the judgment appealed from and suggested that that is true even where the case arises on a certified question.

Furthermore, the issues on appeal are framed by the questions presented which in this case did not raise any issue of enforcement of the statute. In *United States* v. *Arnold Schwinn & Co.,* 388 U.S. 365, 377 (1967), this Court held that since appellees did not appeal, the issues were framed by the Government. In *Phillips Chemical Co.* v. *Dumas Independent School District,* 361 U.S. 376, 386 (1960), reh. den. 362 U.S. 937, this Court warned against interpreting its decisions as dispositive on issues not raised in the jurisdictional statement. In *Phillips,* this Court also noted that an issue which was severed by the District Court for later decision could not be considered on appeal. Here, appellees' claims regarding the application of NYSSL, § 131 (11) were not reached by the District Court and may not be reviewed on this appeal.

The issues* before this Court involve only the validity of NYSSL, § 131(11) on its face—whether the facts proven are rationally related to the fact presumed (Question 1) and whether the statute precludes the applicant from presenting his defense. See *Mobile, J. & K.C.R. R.* v. *Turnipseed,* 219 U.S. 35, 43 (1910) (Question 2). Appellees have not shown the statute to be invalid on either account, as demonstrated in appellant's brief and reiterated briefly in Points II and III which follow.

---

* The third question involving the extension of the order to AFDC recipients is no longer at issue between the parties (Appellees' brief, pp. 122-3).

II

Appellees have failed to prove that there is no rational connection between the facts proven—voluntarily termination of employment and subsequent application for public assistance—and the fact presumed—a purpose to qualify for public assistance. Indeed, there is a close logical relationship sufficient to sustain the rebuttable presumption.

Appellees concede that the validity of the presumption contained in NYSSL, § 131(11) is governed by the rule in *Mobile, J & K.C.R.R.* v. *Turnipseed,* 219 U.S. 35, 43 (1910) —"it is only essential that there shall be some rational connection between the fact proved and the ultimate fact presumed". (Appellees' br., pp. 51, 85; Also see Appellant's br., pp. 25-6, 31). Yet, they fail to rebut the inherent reasonableness of the presumption which relates the voluntary rejection of one source of income with the affirmative application for another in a relatively short time. For a presumption to fail under this test, there must be no rational connection. The asserted relationship must be "purely arbitrary". Appellees' brief does not meet this stringent standard. Instead, they theorize and moralize about the innermost yearnings of the poor, including people who have not applied for public assistance (Appellees' br., pp. 71-72, 78) and people who have not voluntarily terminated employment (Appellees' br., pp. 77, 79-80). Indeed, in all of appellees' general discussions of poverty there is not one word about people who voluntarily terminate employment and who apply for public support within 75 days, the only people to whom the statute applies.

Most of the extensive non-legal material cited relates to the larger public policy question whether the Federal Government should provide assistance to able-bodied em-

ployable persons—"the working poor". But, despite the emphasis on this question in Appellees' brief, it is not on point. Appellant and his predecessors have consistently supported programs to extend assistance to employable individuals. E.g. D. Moynihan, *The Politics of a Guaranteed Income,* 169-70, 202-3, 322, 367, 415-7, 517-8 (Vintage 1973). More concretely, New York does provide support for employable persons who have insufficient resources to support themselves. That is precisely the assistance which appellees were seeking. NYSSL § 158(a). Compare the laws of Arizona (Ariz. Revised Stats., Vol. 15 § 46-233[A][3]) and Delaware (Dela. Code, Title 31 § 503[a]) which do not provide any assistance for any employable person.

The issue confronting the Legislature was not whether employable persons should receive assistance but, whether they should receive it right after they quit a job. The fact that New York has chosen to grant assistance to employable persons does not preclude it from limiting assistance to persons who voluntarily impoverish themselves to qualify for that public support. Hawaii does not provide assistance for a person who is unemployed because of a voluntary separation without good cause or for misconduct." (Hawaii Revised Stats., 1974 Suppl't, Vol. 4, Titles 16-21, Chs. 281-400 § 346-71[1]). Such conduct produces permanent ineligibility, not just for 75 days as it does in New York. New Jersey prohibits "Assistance to the families of the working poor for 90 days after a voluntary cessation of employment. 44 N.J. Stats. Ann. § 13-3(a). The Hawaii and New Jersey statute apply even if the person who voluntarily terminated his employment had not intended to apply for public assistance. The New York Legislature chose not to deny assistance to persons who recently voluntarily terminated their employment but did so with no intention of relying on the public for their support. Even for those people, the Leg-

islature chose not to make them permanently ineligible. Virginia has an identical law. Code of Va. Vol. 9A, 1975 Supplement § 63.1-133.12. This is a carefully drawn statute applying in a limited number of cases, but it is to be expected that it would have a significant impact. When there are 176,080 persons receiving Home Relief (*Statistical Supplement,* Table 6, row 1, column 17) at a cost to State and local government for benefits, alone (excluding medical assistance, food stamps and other services), of $274,834,000 (Statistical Supplement, Table 1, row 24, cols. 1, 3, 5), statutes which govern only a minority of recipients are, in absolute terms, of enormous significance.

Plaintiffs have not shown that as applied to the limited number of people who voluntarily terminate their employment and within 75 days apply for public assistance, the presumption is irrational. There is no empirical data on the behavior of that group. However, the reports on the group most relevant to this case closest were not cited by appellees. There have been two studies devoted to employable public assistance recipients in New York and they both suggested that the availability of public assistance was a disincentive to work for a significant number of these people.

> "But the obstacles to the employment of the welfare employables do not lie solely in their lack of education and training. Many tens of thousands of men and women with less than a high school education are employed throughout New York State in a variety of jobs in both private industry and public agencies . . . it is significant that neither the employable welfare clients nor the employers believe that it is a lack of jobs which is the major obstacle to employment.
>
> • • •
>
> "A majority of the welfare employables express their attachment to the work ethic in a variety of ways—they like work; they would prefer to work even if the return were no greater than from welfare, and they feel they can or could make ends meet on the wages they do or would earn. But there is a significant minority which feels differently. About a third of the employables who are not working regard work as drudgery or have mixed feelings about working. . . . Further, among those who are not working, 17 percent express a definitely negative view toward work which provides earnings no greater than are obtainable from welfare. An additional 20 percent feel they could not live on such wages . . . ." (marginal notes omitted). B. Bernstein, M. Rowan, A. Shkuda, *Obstacles to Employment of Employable Welfare Recipients,* pp. 84-5 (Center for New York City Affairs, New School for Social Research [1974] [mimeograph]).

Interestingly enough, this study found that most employable public assistance recipients believe that in most welfare families there are employable recipients who can, but won't work (B. Bernstein, et al. *Obstacles to Employment, etc., supra,* p. 56):

> "Of the 55 percent who say there are able-bodied persons in welfare families who can but won't work, almost half attribute this situation to laziness and another 17 percent to the lack of financial incentive to work instead of remaining on welfare. Only a minority—18 percent—claim that jobs or training are not abailable for such people. This is a startling finding coming as it does from employable welfare recipients. Though startling, it is confirmed to some extent by the response to another question as to why, in their view, the welfare caseload declined during the preceding year. While a third did not know or did not respond to the question, and somewhat more than a third

thought it was because more jobs were available, about 17 percent believed it was due to a tightening up of the welfare system."

Employable public assistance recipients are in a position to assess the relative advantage of receiving assistance and working at a job of which one is capable. Most regard the availability of assistance as significantly attractive. This should not be unexpected if we recognize the actual value of eligibility for public assistance (B. Bernstein, A. Shkuda, E. Burns, *Income Tested Social Benefits in New York, Adequacy, Incentive and Equity* pp. 138, 142, Studies in Public Welfare, Paper No. 8, Printed for the use of the Joint Economic Committee (GPO # 5270-01862):

"If a four-person family is without income from earnings or other sources such as pensions, interest, or dividends, table 1 reveals that benefits from public assistance, food stamps, and school lunches equal approximately $4,400. If medical care is included, the benefits equal $5,400 for the female-headed household and $5,600 for the intact family. . . . These are net figures however; when translated into the gross income equivalent, the combination excluding medical assistance equals approximately $5,500; including medical assistance, this combination of social programs provides the equivalent of $7,000 for either the intact or female-headed family of four.

"It is of some interest to compare the gross income equivalent of the benefits of these four basic programs —public assistance, food stamps, school lunches, and medical assistance—with the cost of the Bureau of Labor Statistics lower level of living, sometimes known as the city wage earners budget, for the New York area, a level which is considered a decent standard for the family with an employed wage earner.

"In autumn 1971 prices, this was $7,578; when rough

account is taken of price increases between 1971 and 1972, the cost may be put at about $7,880 in 1972 prices. Thus, what may be called the universal package of social program benefits is within about 11 percent of the BLS lower level of living . . . any package of programs which provides the equivalent of 89 percent of the BLS lower living standard must be described as a fairly high standard. It is the equivalent of what a wage earner working a 35-hour week at $3.80 per hour would earn.

• • •

"• • • for those who, because of limited education and skills, or because of discrimination, or other reasons, are unable to earn more than $6,000 to $7,000 per year, the present set of eligibility criteria for benefits from the major social programs does not provide any incentive to increase income. In fact, the result is quite the contrary."

New York's special grant for shelter which provides the amount actually paid and which permits rental arrears to be advanced is also an attraction of public assistance as opposed to employment. Joseph Beverly stated that it was not worth it to him to work because his shelter costs were too high (transcr. def't Ex. E. 4.473). He had already been evicted for failure to pay rent (Pl. aff. A. 150). Mr. Lee was three months behind in his rent when he applied for assistance (Pl. aff. A. 63-4). Every other proposed plaintiff alleged an inability to meet his rental payments at the time he applied for assistance: Milne (Pl. aff. A. 12), Levee (Pl. aff. A. 39), Streeter (Pl. aff. A. 53), Miller (Pl. aff. A. 90), Westbrook (Proposed Compl't A. 232), Reid (Pl. aff. A. 287), Brownlee (Pl. aff. A. 297), Phillips (Pl. aff. A. 311), Scarfone (Pl. aff. A. 314). Very few jobs would yield the immediate lump sum benefit of a rental check.

The mandatory New York State work rules were found to be a reasonable exercise of legislative power by this Court. *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 413, (1973):

> They ". . . embody New York's attempt to promote self-reliance and civic responsibility, to assure that limited state welfare funds be spent on behalf of those genuinely incapacitated and most in need, and to cope with the fiscal hardships enveloping many state and local governments . . ."

If appellees' theory that nobody who could work would seek public assistance were true, there would have been no need to make the rules mandatory—or any reason for that matter, for Congress to enact WIN (42 U.S.C.A. § 602 [a][19]). If there were no person for whom public assistance was an attractive alternative to work, 53,000 recipients in the first year of operation would not have failed to comply with the work rules, although this meant loss of assistance. B. Bernstein, *Obstacles to Employment, supra,* at p. 2, n. 4.

Appellees seek to turn the precedential importance of *Dublino, supra,* on its ear by claiming that, since New York has the work rules, a millenium of some sort has been reached and there is no further need for restrictions on eligibility for employable recipients (Appellees' Br., pp. 50, 66-68). Unfortunately, however, all employable recipients are not immediately returned to the work force by operation of these rules. Only 12% of the employable persons on welfare are placed in jobs and only 30% are even referred to a job. B. Bernstein, *Obstacles to Employment, supra,* p. 3. Therefore, public assistance is still an alternative to work. Secondly, if one's purpose in quitting one's job was to obtain public assistance instead of working at a particular job found to be unpleasant, the work rules would not deter the application. Yet, NYSSL

§ 131(11) would encourage that person to remain with that job until he found a new one.

Appellees' speculation (br. pp. 58-60) that persons quit employment for reasons other than to enable themselves to apply for public assistance is not responsive to the problem addressed by the Legislature. It is not inconsistent with a purpose to qualify for public assistance to quit one's job because of a personality conflict with an employer. Both might simultaneously motivate a person. It might be more useful to ask "If public support were not available, would this person have terminated his employment?" If a person quits without providing for himself even the most basic necessities, it is reasonable to presume he expects that someone else will come to his aid. This statute removes public assistance as an alternative to self-support for a reasonable time after the termination of employment.

Since Appellees cannot prove that the 131 (11) presumption is irrational, they insinuate that something more than rationality must be shown, citing criminal cases in which it has been required that "the presumed fact is more likely than not to flow from the proven fact on which it is made to depend." *Leary* v. *United States,* 395 U.S. 6, 36 (1969) (Appellees' br. pp. 54-5). But criminal cases raise problems which are not present in civil cases, especially like this one where the burden of proof has not been disturbed (See Appellant's br. pp. 33-4, 51). In a case like this, the precise measure of likelihood is not known or knowable. This is a common problem in cases where presumptions are used. For example, the presumption that a gift was made in contemplation of death if it was made within three years of the donor's death (26 U.S.C.A. § 2035) was not enacted after Congress had sought to prove the likelihood of the presumption on the basis of empirical data. The Enoch Arden statutes are not based on empirical findings that more persons who

have not been home for seven years are dead than alive. The measure of a legislative presumption is "some rationality". Other standards are used when determining whether there is a permissible judicial presumption or inference. For example, in *Greer* v. *United States,* 245 U.S. 559 (1918), Mr. Justice HOLMES referred to "common experience" in finding that there was no presumption of good character in criminal cases. It is not judicial, but legislative, experience which is at issue here and legislative findings are entitled to special respect, e.g., *McDonald* v. *Board of Election Commissioners,* 394 U.S. 802, 809 (1969). When reviewed by this Court the presumed fact need only have some relationship with the proven facts.

The decision in *Goddis* v. *Wyman,* 304 F. Supp. 717 (N.D. N.Y.), *aff'd sub nom. Wyman* v. *Bowens,* 397 U.S. 49 (1970), is not to the contrary. The Court refused to determine whether the rebuttable presumption was valid. *Id.* at 722. It found instead that the New York's durational residence statute had as its purpose to deter travel into the State and that that impermissible purpose was fatal to the statute under the principles of *Shapiro* v. *Thompson,* 394 U.S. 618 (1969). The purposes of this statute—to encourage persons to be self-sufficient and to allocate finite state resources to persons most in need of public support—are not only constitutional, but laudable. See *New York State Department of Social Services* v. *Dublino,* 413 U.S. 405 (1973).

Appellees also rely on two cases involving Wisconsin employment rules which do not advance their argument. *Arteaga* v. *Silverman,* 56 Wis. 2d 110, 201 NW 2d 538 (Sup. Ct. Wis. 1972); *Garcia* v. *Silverman,* 393 F. Supp. 590 (E.D. Wis. 1975). The Supreme Court of Wisconsin interpreted state provisions defining eligibilty as precluding the County's determination that Mr. Arteaga's previous voluntary termination of employment rendered him

ineligible for public assistance. *Arteaga* v. *Silverman, supra.* The Court held that the Wisconsin law requiring recipients to accept jobs and training established only a condition for continued eligibility but did not create a bar to initial ineligibility. *Id.* at 201 NW 2d 542. Here the issue is whether a statute which does temporarily bar eligibility in some cases of voluntary termination is valid.

The Federal District Court's decision in *Garcia, supra,* is not analogous to this appeal. In that case an administratively created irrebuttable presumption was declared invalid under the general principles enunciated by this Court in such cases as *Vlandis* v. *Kline,* 412 U.S. 441 (1973) (See Appellant's brief, pp. 31-33). The county administrative letter provided that if more than once within the previous 12 months a person quit a job or was fired through his own neglect. it was conclusively presumed that he was presently unwilling to work. As in other conclusive presumption cases, the Court found that the evil lay in not allowing the applicant an opportunity to rebut the presumption such as is provided in this statute. Rebuttable presumptions are the other side of the coin and under the same analysis are found to be valid.

As we have noted, NYSSL § 131(11) serves important State purposes: (1) requiring self-support for a period after voluntary termination of employment, (2) deterring New Yorkers from voluntarily terminating employment without the means of subsistence for the near future, and (3) apportioning the finite sums available for the relief of poverty to the use of persons who are most in need. The presumption is important in effectuating those purposes efficiently, uniformly and fairly. Since the applicant always knows why he terminated his employment and since the Department of Social Services does not, it would be burdensome for the local agency to have to offer affirmative evidence in each case.

It is possible that under other statutes and regulations (Appellant's br. pp. 47-8), an applicant could have been required to prove that he did not terminate his employment for the purpose of obtaining public assistance without this specific presumption. However it is fairer to the applicant and to the public to have that duty clearly enunciated and uniformly applied.

In any event, the injunction of this presumption now could be interpreted to prevent the local agency from making such requests for affirmative proof of motive unless the decision is reversed.

There is nothing inconsistent in Appellant's position that the presumption is necessary and his position that it is easy for a person who did not terminate his employment for the purpose of obtaining public assistance to overcome it. Because the relevant information is ordinarily available to the recipient it is easy for him to rebut the presumption when it is contrary to the facts; but because the Department would not be able to prove the applicant's purpose, the presumption is necessary.

III

Appellees have not proven their claims of denial of due process of law—that review of denial of assistance to them should take precedence over other fair hearings, that they are entitled to receive assistance after it has been denied or that they have no opportunity to rebut the presumption at the local agency.

Appellees continue to assert that the statute permits rebuttal only in a State fair hearing (Appellees' br. pp. 90-1); but appellant demonstrated that the initial rebuttal occurs in the local Social Services District (Appellant's br. pp. 44-8). Appellees point to the notice sent to Milne which implied that he did not have an opportunity to ex-

plain his termination of employment (Appellees' br. pp. 90-1); but as unfortunate as the erroneous initial proceedings were in that case, they were not based on the presumption or any other aspect of NYSSL § 131(11) (See *ante*, at pp. 2-4).

Appellees claim that they are entitled to have their claims heard before those of recipients who have not recently voluntarily terminated employment. However, they have not shown that a finding of ineligibility for a limited period entitles one to consideration superior to those who have been found ineligible indefinitely. The New York State Department of Social Services must schedule an average of 8,300 fair hearings every month (Appendix "A", *post* at p. 1a). Most of the people requesting those hearings claim to be in exigent circumstances. It is the unfortunate fact that Appellant is in the business of assessing and relieving exigencies. Appellees have not shown that they deserve precedence over anyone else. Their case will not become moot. They have the right to reapply for assistance after 75 days even if the Agency's determination has been sustained. An examination of the enormous volume of hearings which must be scheduled each month demonstrates that speed and efficiency would be sacrificed if the Department were required not to fill up its hearing schedule, lest some recently employed applicant demand an immediate hearing.

Even so, hearings in these cases have not been unduly delayed. Joseph Beverly's request for a fair hearing was received on February 26, 1974. A hearing was held on March 14 and a decision rendered on March 28 (Dft. aff. Exs. D to E, A. 461-8).

Allen Phillips was denied assistance on March 8, 1974 and his fair hearing was held on April 4, 1974 (appellees' br. App. "A"). Shirley Miller first applied for public assistance on January 14, 1974, and a fair hearing was held

on February 19, 1974 (Appellee's App. "B"). Anthony Brownlee was denied assistance on April 18, 1973, the day he applied. The hearing was held on May 8, 1973 and the decision was rendered on May 22, 1973.

Furthermore, the New York Court of Appeals in *Jones* v. *Berman,* 37 N.Y.2d 42, 371 N.Y. Supp. 2d 422 (1975), held that expedited appeals from denials of emergency assistance must be provided. Such assistance is available to HR recipient families, as well as to AFDC families. 18 NYCRR § 358.28; 75 Administrative Letter 78 (Aug. 8, 1975).

However details of the actual practice in holding hearings are not properly raised on this appeal since the Court below specifically refused to pass on the question (Op. A. 567) and there are hotly contested issues of fact which separate the parties. (See *ante,* at p. 2).

Appellees' most startling claim is that an applicant for public assistance should be entitled to receive that assistance after he has been found to be ineligible. This assertion is based on several faulty premises. The first and shakiest is that because he has been found to be ineligible under § 131(11) for seventy-five days, he has been found to be eligible in all other respects and has thus been deprived of benefits previously enjoyed as were the Appellees in *Goldberg* v. *Kelly,* 397 U.S. 254 (1970) (Appellees' br. pp. 96-101). However persons found to be ineligible under NYSSL § 131(11) are not by that, or any other, token found to be eligible in all other respects. In fact they have not been found to be eligible at all. No statute or regulation contemplates the two-step procedure concocted by Appellees.

Secondly, Appellees suggest that the Agency might have so much difficulty in making a correct decision based on a presumption that they are likely to make mistakes in determining eligibility (Appellees' br. pp. 101-7). The

solution proposed by Appellees is ludicrous—that all applicants be granted assistance unless and until a fair hearing concludes that they are not entitled to relief. It is hard to take a suggestion like that seriously. It has no safeguards against any erroneous self-serving application. The potential for error under this proposal is staggering as is the danger of careless divergence of public welfare funds from the needy to those who quit their jobs and then demand assistance.

The third misconception advanced by Appellees is that a person who has been found to be ineligible for 75 days is in a worse situation than one who is found ineligible indefinitely. This formula is contrary to fact.

The pre-termination hearing of *Goldberg* v. *Kelly,* 397 U.S. 254 (1970), is required only when a person is cut off from welfare benefits currently enjoyed. This Court even refused to apply that principle automatically in cases of reduction of benefits. *Daniel* v. *Goliday,* 398 U.S. 73 (1970). To require such a hearing before an application can be denied would create hardship for the public and for other needy people which is unnecessary.

The procedures provided by appellant to review the denial of state assistance fully comports with due process of law.

In sum appellees have failed to show that the presumption is unreasonable or that the procedures for enforcing it are unfair.

CONCLUSION

For the foregoing reasons and those stated in appellant's main brief, the final judgment and order of the three-judge District Court should be reversed and summary judgment granted to appellant.

Dated, New York, New York, Nov. 23, 1975.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Appellant

SAMUEL A. HIRSHOWITZ
First Assistant Attorney General

AMY JUVILER
Assistant Attorney General
of Counsel

APPENDIX A

DEPARTMENT OF SOCIAL SERVICES
FAIR HEARING TREND REPORT
1975

	JAN	FEB	MARCH	APRIL	MAY	JUNE	JULY	AUGUST	SEPT
FAIR HEARING ACTIVITY									
1. Requests	6,407	5,751	7,004	8,669	7,557	7,909	7,595	6,256	6,928
2. Cases Closed									
a. By Decision	3,605	3,158	3,211	3,620	3,512	3,809	4,209	3,536	3,829
b. By Withdrawal or Abandonment by the applicant/recipient	4,062	3,141	3,976	4,103	3,612	3,149	3,117	3,528	4,382
WORK COMPLETED DURING MONTH									
1. Fair Hearings									
a. Scheduled	8,570	6,911	7,728	9,267	8,990	8,361	8,631	8,197	8,038
b. % Held	43	45	46	51	53	48	46%	44	45%
c. Aid Continuing* Held	1,244	1,489	1,515	2,041	2,087	1,819	2,142	1,492	1,502
2. Hearing Officers	51	53	53	53	53	53	53	52	53
3. Hearings Scheduled/Officer	168	130	146	175	169	158	163	158	152
4. Decisions/Officer	73	60	61	68	66	75	79	69	68

* Cases in which, until the decision is rendered, persons continue to receive benefits to which the local agency has found they are not entitled. See *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

(59009)